

(5)  
No. 89-7370

Supreme Court, U.S.  
**FILED**

AUG 2 1990

JOSEPH F. SPANIOLO, JR.  
CLERK

In The  
**Supreme Court of the United States**  
October Term, 1990

---

MOSHE GOZLON-PERETZ,

*Petitioner,*

v.

UNITED STATES,

*Respondent.*

---

**On Writ Of Certiorari  
To The United States Court Of Appeals  
For The Third Circuit**

---

**BRIEF FOR THE PETITIONER**

---

PETER GOLDBERGER  
Counsel of Record  
PAMELA A. WILK  
The Ben Franklin, Suite 400  
Chestnut Street at Ninth  
Philadelphia, PA 19107

(215) 923-1300

*Attorneys for Petitioner*

151212

**QUESTION PRESENTED**

Did the mandatory minimum terms of supervised release required by the Anti-Drug Abuse Act of 1986 become effective for offenses committed on or after the date of enactment, October 27, 1986, or was the effective date for these provisions instead November 1, 1987, when the Sentencing Reform Act, defining supervised release and establishing guidelines for its imposition, went into effect?

## LIST OF ALL PARTIES

The caption of the case in this Court contains the names of all parties (Moshe Gozlon-Peretz and the United States). Ellus Yehuda and Yaffa Levy were codefendants in the district court and were parties to the initial direct appeal. Neither was a party to the appeal after resentencing on remand, and neither is a party in this Court.

## TABLE OF CONTENTS

|   | Page     |
|---|----------|
| QUESTIONS PRESENTED .....   | i        |
| LIST OF ALL PARTIES .....   | ii       |
| TABLE OF AUTHORITIES .....  | v        |
| OPINIONS BELOW .....  | 1        |
| JURISDICTION .....  | 1        |
| STATEMENT OF THE CASE .....   | 1        |
| a. Procedural History .....   | 1        |
| b. Statement of Facts .....   | 4        |
| SUMMARY OF ARGUMENT .....   | 5        |
| ARGUMENT:   |          |
| <b>A TERM OF SUPERVISED RELEASE MAY NOT BE IMPOSED AS PART OF THE SENTENCE FOR CONTROLLED SUBSTANCES OFFENSES COMMITTED BEFORE NOVEMBER 1, 1987, WHEN THE LAW PROVIDING FOR SUPERVISED RELEASE BECAME EFFECTIVE .....</b>       | <b>9</b> |
| A. <i>Language and Policy of the Anti-Drug Abuse Act of 1986</i> .....  | 11       |
| 1. Only by construing November 1, 1987, to be the effective date for all supervised release provisions can the various parts of the ADAA pertaining directly to supervised release and special parole terms be reconciled. .... | 14       |
| 2. None of the innovative penalty provisions of the ADAA can sensibly be read as applying to pre-November 1987 offenses. ...  | 24       |

## TABLE OF CONTENTS – Continued

|  | Page |
|--|------|
| 3. The policy behind the change from special parole to supervised release was sentencing reform, not drug penalty enhancement. ....    | 28   |
| B. <i>The History of Controlled Substances Penalty Reform and the Legislative History of the 1986 Amendments.</i> .                    | 32   |
| 1. History of controlled substances penalty reform. ....   | 33   |
| 2. Legislative history of the 1986 penalty amendments. ....  | 36   |
| C. <i>The Scheme of Sentencing Reform: the 1986 ADAA Must Be Construed "in Pari Materia" with the 1984 Sentencing Reform Act.</i> .... | 40   |
| D. <i>The Lower Court's "Error" Theory Contravenes the Rule of Lenity.</i> ....  | 44   |
| CONCLUSION .....   | 50   |
| APPENDIX: Full text of statutes involved.  |      |

## TABLE OF AUTHORITIES

|  | Page          |
|--|---------------|
| CASES  |               |
| <i>Adamo Wrecking Co. v. United States</i> , 434 U.S. 275 (1978) .....                             | 49            |
| <i>Barrett v. United States</i> , 423 U.S. 212 (1976) .....  | 29            |
| <i>Bifulco v. United States</i> , 447 U.S. 381 (1980) .....  | <i>passim</i> |
| <i>Bozza v. United States</i> , 330 U.S. 160 (1947) .....  | 25            |
| <i>Brown v. Duchesne</i> , 19 How. (60 U.S.) 183 (1857) .....                                      | 14            |
| <i>Busic v. United States</i> , 446 U.S. 398 (1980) ....   | 46, 47, 48    |
| <i>Colautti v. Franklin</i> , 439 U.S. 379 (1979) .....  | 19            |
| <i>Comm'r of Internal Revenue v. Asphalt Products Co.</i> , 482 U.S. 117 (1987) (per curiam) ..... | 47            |
| <i>Gardner v. Barney, Collector</i> , 6 Wall. (73 U.S.) 499 (1868) .....                           | 13            |
| <i>Hernandez Rivera v. United States</i> , 719 F.Supp. 65 (D.P.R. 1989) .....                      | 27            |
| <i>Huddleston v. United States</i> , 415 U.S. 814 (1974) .....                                     | 48            |
| <i>Hughey v. United States</i> , 495 U.S. ___, 109 L.Ed.2d 408 (May 21, 1990) .....                | 49            |
| <i>Kokoszka v. Belford</i> , 417 U.S. 642 (1974) .....   | 14, 41        |
| <i>Ladner v. United States</i> , 358 U.S. 169 (1958) .....   | 49            |
| <i>Matthews v. Zane</i> , 7 Wheat. (20 U.S.) 164 (1822) ....                                       | 13            |
| <i>McNally v. United States</i> , 483 U.S. 350 (1987) .....  | 49            |
| <i>Mercado v. United States</i> , 898 F.2d 291 (2d Cir. 1990) .....                                | 3             |



## TABLE OF AUTHORITIES – Continued

|   | Page |
|---|------|
| <i>Mistretta v. United States</i> , 488 U.S. 361 (1989) .. 9, 34, 43                                      |      |
| <i>Mountain States Telephone &amp; Telegraph Co. v. Pueblo of Santa Ana</i> , 472 U.S. 237 (1985)..... 19 |      |
| <i>New York Telephone Co. v. New York State Dept. of Labor</i> , 440 U.S. 519 (1979)..... 21              |      |
| <i>Oscar Mayer &amp; Co. v. Evans</i> , 441 U.S. 750 (1979)..... 41                                       |      |
| <i>Philbrook v. Glodgett</i> , 421 U.S. 707 (1975)..... 16  |      |
| <i>Reiter v. Sonotone Corp.</i> , 442 U.S. 330 (1979) ..... 19  |      |
| <i>Scarborough v. United States</i> , 431 U.S. 536 (1977) ..39, 40  |      |
| <i>Shapiro v. United States</i> , 335 U.S. 1 (1948)..... 24   |      |
| <i>Sullivan v. Everhart</i> , 494 U.S. ___, 108 L.Ed.2d 72 (1990) .....16, 26                             |      |
| <i>Sullivan v. Finkelstein</i> , 496 U.S. ___, 110 L.Ed.2d 563 (1990)..... 21                             |      |
| <i>Tanner v. United States</i> , 483 U.S. 107 (1987) ..... 49   |      |
| <i>Taylor v. United States</i> , 495 U.S. ___, 109 L.Ed.2d 607 (1990) ..... 32                            |      |
| <i>Town of Louisville v. Portsmouth Savings Bank</i> , 13 Otto (104 U.S.) 469 (1881) ..... 13             |      |
| <i>TVA v. Hill</i> , 437 U.S. 153 (1978) ..... 46   |      |
| <i>United States v. Albertini</i> , 472 U.S. 675 (1985) ..... 24  |      |
| <i>United States v. Bass</i> , 404 U.S. 336 (1971) .....40, 49  |      |

## TABLE OF AUTHORITIES – Continued

|   | Page |
|---|------|
| <i>United States v. Batchelder</i> , 442 U.S. 114 (1979) ..... 40                                       |      |
| <i>United States v. Brundage</i> , 903 F.2d 837 (D.C.Cir. 1990)..... 4                                  |      |
| <i>United States v. Byrd</i> , 837 F.2d 179 (5th Cir. 1988) .... 18                                     |      |
| <i>United States v. De Los Reyes</i> , 842 F.2d 755 (5th Cir. 1988)..... 4                              |      |
| <i>United States v. Ferryman</i> , 897 F.2d 584 (1st Cir. 1990).....37, 38, 39                          |      |
| <i>United States v. Figueroa</i> , 898 F.2d 825 (1st Cir. 1990).....4, 24                               |      |
| <i>United States v. Gozlon-Peretz</i> , 894 F.2d 1402 (3d Cir. 1990) ..... <i>passim</i>                |      |
| <i>United States v. Kozminski</i> , 487 U.S. 931 (1988) ..... 48  |      |
| <i>United States v. Levario</i> , 877 F.2d 1483 (10th Cir. 1989).....3, 20                              |      |
| <i>United States v. Levy</i> , 865 F.2d 551 (3d Cir. 1989) (in banc)..... 1, 2, 28                      |      |
| <i>United States v. Morton</i> , 467 U.S. 822, 828 (1974) ..23, 26                                      |      |
| <i>United States v. Paiz</i> , 905 F.2d 1014 (7th Cir. 1990) ..... 3                                    |      |
| <i>United States v. Phungphiphadhana</i> , 640 F.Supp. 88 (D.Nev. 1986)..... 45                         |      |
| <i>United States v. Portillo</i> , 863 F.2d 25 (8th Cir. 1988) ..... 3                                  |      |
| <i>United States v. Preston</i> , 1990 WL 80690 (W.D.Va., filed May 31, 1990) (Crim. No. 87-85)..... 27 |      |

## TABLE OF AUTHORITIES - Continued

|  | Page          |
|--|---------------|
| <i>United States v. Riverside Bayview Homes, Inc.</i> , 474 U.S. 121 (1985) .....  | 22            |
| <i>United States v. Smith</i> , 840 F.2d 886 (11th Cir.), cert. denied, 109 S.Ct. 154 (1988) .....                       | 4             |
| <i>United States v. Torres</i> , 880 F.2d 113 (9th Cir. 1989), cert. denied, 110 S.Ct. 873, 107 L.Ed.2d 956 (1990) ..... | 4             |
| <i>United States v. Turkette</i> , 452 U.S. 576 (1981) .....   | 24            |
| <i>United States v. Universal C.I.T. Credit Corp.</i> , 344 U.S. 218 (1952) .....  | 14, 49        |
| <i>United States v. Whitehead</i> , 849 F.2d 849 (4th Cir.), cert. denied, 109 S.Ct. 154 (1988) .....                    | 3             |
| <i>United States Railroad Retirement Bd. v. Fritz</i> , 449 U.S. 166 (1980) .....  | 45            |
| <i>Warden v. Marrero</i> , 417 U.S. 653 (1974) .....   | 28            |
| <i>In re Whittenburg</i> , 680 F.Supp. 1160 (S.D.Oh. 1987) ....  | 30            |
| CONSTITUTION, STATUTES AND RULES   |               |
| 1 U.S.C. §§ 101-111 .....  | 13            |
| 18 U.S.C. § 3553 .....   | 26, 27        |
| 18 U.S.C. § 3559 .....   | 41            |
| 18 U.S.C. § 3583 .....   | <i>passim</i> |
| 18 U.S.C. § 3603(4) (Supp. V 1987) .....   | 10            |
| 18 U.S.C. § 3655 (1982) (6th para.) .....  | 29            |

## TABLE OF AUTHORITIES - Continued

|                              | Page                       |
|------------------------------|----------------------------|
| 18 U.S.C. § 4164 .....       | 46                         |
| 21 U.S.C. § 841(a) .....     | 1, 11, 33                  |
| 21 U.S.C. § 841(b) .....     | <i>passim</i>              |
| 21 U.S.C. § 841(c) .....     | 9, 30                      |
| 21 U.S.C. § 845 .....        | 17, 19                     |
| 21 U.S.C. § 845a .....       | 17, 18, 19, 20, 21, 22, 27 |
| 21 U.S.C. § 845b .....       | 18, 27                     |
| 21 U.S.C. § 846 .....        | 1, 2                       |
| 21 U.S.C. § 960(b) .....     | 11, 12, 17, 18             |
| 21 U.S.C. § 960(c) .....     | 9, 29, 30                  |
| 28 U.S.C. § 1254(1) .....    | 1                          |
| Anti-Drug Abuse Act of 1986: |                            |
| § 1002 .....                 | <i>passim</i>              |
| § 1003(a) .....              | 23                         |
| § 1004 .....                 | <i>passim</i>              |
| § 1005 .....                 | 42                         |
| § 1006 .....                 | 22                         |
| § 1007 .....                 | 26, 27                     |
| § 1008 .....                 | 26                         |
| § 1009 .....                 | 26, 27                     |
| § 1102 .....                 | 18, 27                     |
| § 1103 .....                 | 18                         |

## TABLE OF AUTHORITIES - Continued

|  | Page               |
|--|--------------------|
| § 1104(c) .....  | 21                 |
| § 1302 .....   | 12                 |
| § 1866(b, c) .....   | 21, 22             |
| Comprehensive Crime Control Act of 1984 .....                              | 3, 34, 46          |
| Controlled Substances Act of 1970, 21 U.S.C.<br>§§ 801-904 .....           | 11, 15, 17, 29, 33 |
| Controlled Substances Import and Export Act, 21<br>U.S.C. §§ 951-971 ..... | 9, 15, 17, 29      |
| Controlled Substances Penalties Amendments Act<br>of 1984 .....            | 34                 |
| Criminal Law and Procedure Technical Amend-<br>ments Act of 1986 .....     | 21, 36             |
| Pub.L. 100-690, 102 Stat. 4418 (Nov. 18, 1988)<br>.....                    | 21, 23, 36, 41     |
| Sentencing Act of 1987 .....   | 23, 27, 36         |
| Sentencing Reform Act of 1984 .....  | <i>passim</i>      |
| § 212(a)(2) .....  | 22, 40             |
| § 224 .....  | 37, 42             |
| § 225 .....  | 42, 43             |
| § 235(a)(1) .....  | 23, 35, 43         |
| § 235(b)(1) .....  | 31                 |
| Sentencing Reform Amendments Act of 1985 .....                             | 35                 |
| 28 C.F.R. § 2.38 .....   | 29                 |
| 28 C.F.R. § 2.57 (1989) .....  | 10, 30             |

## TABLE OF AUTHORITIES - Continued

|  | Page       |
|--|------------|
| U.S. S.Ct. Rule 24.1(a) .....  | 25         |
| Fed. R. Crim. P. 35(b) .....   | 26, 27     |
| MISCELLANEOUS  |            |
| H.R. 5484, 99th Cong., 2d Sess. (1986) .....   | 37, 38, 39 |
| S. 2878, 99th Cong., 2d Sess. (1986) .....   | 38         |
| 22 Comp.Pres.Doc. 1192-1194 (Sept. 15, 1986) .....   | 38         |
| H.Rep. No. 845, 99th Cong., 2d Sess. (1986) .....  | 37         |
| S.Rep. 98-225, 98th Cong., 1st Sess. (1983) .....  | 31, 43     |
| 132 Cong. Rec. H (daily ed. Sept. 8, 1986) .....   | 37         |
| 132 Cong. Rec. H (daily ed. Sept. 11, 1986) .....  | 37         |
| 132 Cong. Rec. S (daily ed. Sept. 25, 1986) .....  | 38         |
| 132 Cong. Rec. S (daily ed. Sept. 26, 1986) .....  | 38         |
| 132 Cong. Rec. S (daily ed. Sept. 30, 1986) .....  | 38         |
| 132 Cong. Rec. S (daily ed. Oct. 6, 1986) .....  | 38         |
| 132 Cong. Rec. S (daily ed. Oct. 15, 1986) .....   | 39         |
| 132 Cong. Rec. H (daily ed. Oct. 17, 1986) .....   | 39         |
| Slawsky, "Looking at the Law," 53 Fed.Prob. 69<br>(June 1989) .....  | 31         |
| 2 Sutherland's Statutes and Statutory Construc-<br>tion (Sands 4th ed., rev. N. Singer 1986 & 1990<br>Cum.Supp.) ..... | 13         |



## OPINIONS BELOW

V

The Opinion of the United States Court of Appeals for the Third Circuit on appeal after remand is published as *United States v. Gozlon-Peretz*, 894 F.2d 1402 (3d Cir. 1990). J.A. 43, 54 (judgment). The Third Circuit's opinion affirming the convictions on direct appeal is *United States v. Levy*, 865 F.2d 551 (1989) (in banc); J.A. 19. There is no published opinion of the District Court.

---

## JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit was entered on January 25, 1990. The petition for certiorari was filed April 25, 1990, and was granted June 18, 1990. This Court's jurisdiction rests upon 28 U.S.C. § 1254(1).

---

## STATEMENT OF THE CASE

This case presents sentencing issues arising out of the petitioner Moshe Gozlon-Peretz's convictions for possession and distribution of heroin in February of 1987.

### a. Procedural History

After a jury trial in the United States District Court for the District of New Jersey (Hon. John F. Gerry, Chief U.S.D.J., presiding), petitioner Moshe Gozlon-Peretz was convicted on May 21, 1987, J.A. 2-3 (Dkt. # 25), of all three counts in a superseding indictment charging conspiracy and possession with intent to distribute heroin on February 26, 1987, in violation of 21 U.S.C. §§ 841(a)(1), 846.



J.A. 14 (indictment). The petitioner's conviction on Count 3 was for possessing with intent to distribute in excess of one kilogram of heroin; his conviction on Count 2 was for aiding and abetting distribution of a separate 240 grams of heroin on that date.<sup>1</sup> Sentence was imposed on August 14, 1987. J.A. 4 (Dkt. # 34).

Petitioner Gozlon<sup>2</sup> and a co-defendant, Levy, appealed their convictions and sentences; the third co-defendant, Yehuda, appealed the sentence imposed upon his plea of guilty. The court of appeals (per Stapleton, J.) affirmed petitioner's and Levy's convictions (and Levy's sentences). *United States v. Levy*, 865 F.2d 551 (3d Cir. 1989) (in banc) J.A. 19. However, the appellate court vacated petitioner's and Yehuda's sentences and remanded for resentencing. The court of appeals held that the district court had apparently imposed 20 year terms against both defendants on Count 3 mistakenly believing, as suggested by the prosecutor, that the statute prohibited parole for the first 10 years of the sentence but carried parole eligibility after that time. *Id.* at 559-61; J.A. 37-39.

Chief Judge Gerry resentenced the petitioner on April 14, 1989. Because the special parole provisions of 21 U.S.C. § 841(t)(1)(A) had been repealed by § 502 of the

<sup>1</sup> His conviction on Count 1 was for conspiracy in violation of 21 U.S.C. § 846 to possess and distribute heroin. Under § 846 as then in effect, neither special parole nor supervised release could be imposed. See *Bifulco v. United States*, 447 U.S. 381 (1980). The 20-year concurrent sentence on Count 1 is therefore not at issue in this Court.

<sup>2</sup> The petitioner Moshe Gozlon-Peretz is addressed as "Mr. Gozlon." We refer to him in this brief simply as "the petitioner," "petitioner Gozlon" or just "Gozlon."

Comprehensive Crime Control Act of 1984 (effective Oct. 12, 1984), petitioner's counsel argued that the court should not impose special parole terms on the two substantive counts. The government appeared to agree with the defense that supervised release was inapplicable to these pre-November 1987 offenses, and argued in favor of imposing special parole.

Judge Gerry noted that he was aware of defense counsel's arguments, but did not otherwise address them. The district court imposed concurrent special parole terms of five years each on the two substantive counts. The court also imposed 15 years' imprisonment on Counts 2 and 3 for possession and distribution, and 20 years for conspiracy on Count 1, all concurrent, as well as a (noncommitted) fine of \$200,000 on Count 3. J.A. 18.

On appeal, the Third Circuit (Becker, J., with Cowen & Seitz, JJ.) held that the lower court had erred in imposing special parole terms, but ruled that a remand for the imposition of terms of supervised release was required. The court noted that its judgment accorded with that of the Ninth Circuit but diverged from the views of the Fourth, Fifth and Eleventh. *United States v. Gozlon-Peretz*, 894 F.2d 1402, 1404 (3d Cir. 1990); J.A. 43, 51.<sup>3</sup>

<sup>3</sup> The Third Circuit's decision below directly conflicts with a decision of the Tenth Circuit which holds that the supervised release language of § 841(b)(1)(A), as amended in 1986, was not effective for offenses committed prior to November 1, 1987. See *United States v. Levario*, 877 F.2d 1483, 1487-89 (1989). *Levario* accords with the reasoning applied in § 841(b)(1)(B) and (b)(1)(C) cases by six other Circuits. *E.g.*, *United States v. Paiz*, 905 F.2d 1014 (7th Cir. 1990); *Mercado v. United States*, 898 F.2d 291 (2d Cir. 1990) (per curiam); *United States v. Portillo*, 863 F.2d 25 (8th Cir. 1988) (per curiam); *United States v. Whitehead*, 849

(Continued on following page)

The United States consented to the granting of certiorari. On June 18, 1990, this Court granted the petition, limited to the question as restated by the United States, which addresses supervised release only, not special parole. On that basis, this brief does not undertake to defend the part of the court of appeals' judgment by which the petitioner was not aggrieved. If this Court should decide to expand the scope of the question, the petitioner would respectfully request leave to file a supplemental brief in support of the judgment below vacating the special parole terms imposed in this case upon resentencing.

#### b. Statement of Facts

After several months of abortive discussions, petitioner Gozlon's co-defendant Yehuda arranged with a special agent of the U.S. Drug Enforcement Agency, acting undercover, for a sale of at least one kilogram of heroin to take place in Atlantic City, New Jersey. J.A. 23-25. On February 26, 1987, Gozlon, Levy and Yehuda travelled together from New York to Atlantic City. Levy took a tenth floor room at the Sands Hotel. After repeated

---

(Continued from previous page)

F.2d 849, 860 (4th Cir.), *cert. denied*, 109 S.Ct. 154 (1988); *United States v. De Los Reyes*, 842 F.2d 755, 757, 758 n.3 (1988) (declining to resolve precise question presented in this case); *United States v. Smith*, 840 F.2d 886, 889-90 (11th Cir.), *cert. denied*, 109 S.Ct. 154 (1988).

The decision below accords with the decisions in *United States v. Brundage*, 903 F.2d 837 (D.C. Cir. 1990); *United States v. Torres*, 880 F.2d 113 (9th Cir. 1989), *cert. denied*, 110 S.Ct. 873, 107 L.Ed.2d 956 (1990), and *United States v. Figueroa*, 898 F.2d 825 (1st Cir. 1990).

further negotiations, during which Yehuda represented that he was required to gain approval of the details of the transaction from a "friend," Yehuda and the agent agreed on an initial delivery of 250 grams. At 11:45 p.m. that day, Yehuda made the initial delivery and was arrested; the sample was later found to consist of 185 grams of heroin. J.A. 25-28.

Agents then searched Levy's room and another that had been rented by Yehuda. Petitioner was arrested in Levy's room. Upon arrest, petitioner identified himself as shown in a false passport; circumstantial evidence suggested that he was the "friend" with whom Yehuda had been talking. Another two kilograms (2127 grams) of 24% heroin were found in Yehuda's room. J.A. 28.

---

#### SUMMARY OF ARGUMENT

Terms of supervised release could not properly be imposed as part of the sentence in this case, because the law creating "supervised release" did not go into effect until after the date when the petitioner committed his offenses. Moshe Gozlon-Peretz was sentenced for controlled substances offenses committed on February 26, 1987. The version of 21 U.S.C. § 841(b) prescribing the punishment for these crimes did not authorize the imposition of special parole terms for those offenses; a prior version which mandated special parole had been repealed more than a year before his offenses were committed. The court of appeals therefore agreed with the petitioner that the special parole terms imposed by the district court as part of the petitioner's sentence are invalid and must be vacated. J.A. 45-46, 48, 51, 53; 894 F.2d at 1403-04, 1406. ("Special parole" was an extended



form of parole unique to controlled substances cases.) However, the court of appeals ruled that the language of 21 U.S.C. § 841(b)(1)(A), as amended in 1986, required terms of supervised release on those counts and remanded for their imposition. J.A. 49-50; 894 F.2d at 1404-05. ("Supervised release" is an innovation in federal sentencing created by the Sentencing Reform Act of 1984 ("SRA") in connection with the SRA's abolition of parole, including "special parole.") The language, structure and purposes of the 1986 Act, considered together with related statutes, show that the court of appeals was wrong to hold that supervised release applied to this pre-Sentencing Reform Act case.

(a) Although § 1002 of the Anti-Drug Abuse Act ("ADAA"), which created the version of the penalty statute applied in this case, does not specify an effective date, it was not effective upon its enactment on October 27, 1986. An examination of statutory language and purpose in this case overcomes the general axiom that statutes are ordinarily deemed effective upon enactment, barring an explicit provision to the contrary.

(i) Several other provisions of the ADAA mentioning supervised release contain effective date clauses explicitly linked to the taking effect of the SRA, which occurred on November 1, 1987. Moreover, other provisions of the ADAA can be made sense of only if construed to continue special parole until November 1, 1987, with a change to supervised release occurring on that date. These related sections of the ADAA must all be construed *in pari materia* with § 1002, yielding a uniform effective date of November 1, 1987 – after the commission of the petitioner's offenses – for the supervised release provision.

(ii) The revision of 21 U.S.C. § 841(b) effected by § 1002 of the ADAA not only mandated supervised release but also abolished parole and created mandatory minimum sentences of imprisonment. Other sections of the ADAA create mechanisms to encourage accused persons to cooperate with the authorities in order to avoid these mandatory minimums, but those sections by their terms are not applicable to offenses committed before November 1, 1987. Construction of these and other provisions *in pari materia* with § 1002 show that the entire section, necessarily including its provisions for supervised release, did not go into effect until November 1, 1987.

(iii) The transition from a system allowing parole, including special parole, to one including supervised release was part of the scheme of sentencing reform established by the 1984 Act. Because the replacement of provisions for special parole with terms of supervised release does not serve the Congressional purpose of drug penalty enhancement, but rather its concurrent goal of sentencing reform, it is more reasonable to believe that Congress intended to allow a one-year delay in implementation of ADAA § 1002's supervised release provisions until such time as the related provisions of the SRA and its implementing guidelines would be in place.

(b) The legislative history of sentencing reform and controlled substances penalty revision during the 1984 to 1987 period further suggests that the mandatory terms of supervised release established by the ADAA were connected with sentencing reform and not with drug penalty enhancement. Their effective date should thus be tied to that of the SRA. Even if the legislative history of the ADAA suggests that Congress's last-minute substitution

of "supervised release" for "special parole" in several places was not well thought out, it is not so irrational or contrary to the statute as a whole as to allow for judicial intervention rather than for enforcement of the statute as written. Here, the entire statute, as enacted, can be rationally implemented so long as the unstated effective date of the SRA-related provisions is construed to be that of the SRA.

(c) The concept of "supervised release" as required by the ADAA has no meaning apart from the substantive and procedural provisions of the SRA and so must be construed *in pari materia* with that statute as well. The ADAA's supervised release provisions therefore cannot be put into effect prior to the SRA's effective date of November 1, 1987.

(d) The relevant Congressional enactments must be read, consistent with the techniques and canons of construction, without adding to the statutes any punishment which is not plainly there. Reading all the sections of the ADAA providing for supervised release together with each other and in light of related provisions of the SRA yields only one rational conclusion: that the supervised release provisions were not effective until November 1, 1987. But even if there were still ambiguity or doubt after a careful analysis of the relevant statutory language, the rule of lenity would require the same conclusion. *Bifulco v. United States*, 447 U.S. 381 (1980).

## ARGUMENT

**A TERM OF SUPERVISED RELEASE MAY NOT BE IMPOSED AS PART OF THE SENTENCE FOR CONTROLLED SUBSTANCES OFFENSES COMMITTED BEFORE NOVEMBER 1, 1987, WHEN THE LAW PROVIDING FOR SUPERVISED RELEASE BECAME EFFECTIVE.**

*Preliminary Statement.* This case involves an aspect of the problems created in the transition from one system of federal criminal sentencing to another. Between 1984 and 1987, the time at issue here, Congress engineered enormous changes in federal sentencing laws. See generally *Mistretta v. United States*, 488 U.S. 361 (1989). During the same period, Congress also repeatedly changed the controlled substances statutes, including their penalty provisions. These alterations in the drug laws were not always in harmony with the overall process of sentencing reform. One of the areas of dissonant overlap involves the abolition of parole, including the extended terms of parole in controlled substances cases known as "special parole," see *Bifulco v. United States*, 447 U.S. 381 (1980), and the creation of a new form of post-confinement monitoring called "supervised release."

"Special parole" was really just *more* parole, required to be added to the unserved portion of certain prison sentences in controlled substances cases. 21 U.S.C. §§ 841(c), 960(c) (1982).<sup>4</sup> The length of the special parole

<sup>4</sup> These provisions are formally known as sections 405 of the Controlled Substances Act and section 1515 of the Controlled Substances Import and Export Act. See, e.g., *Bifulco*, *supra* (referring to these provisions by Act section numbers). To minimize the proliferation of confusing section number



term was determined by the judge at the time of sentencing, subject to a mandatory minimum term and no stated maximum. The timing and conditions of release and supervision on special parole, however, like ordinary parole, were under the control of the United States Parole Commission, as were questions of revocation and reparole. 28 C.F.R. § 2.57 (1989).

"Supervised release," on the other hand, an innovation of the 1984 Sentencing Reform Act, was designed to replace parole with relatively short, tailored terms of supervision, imposed by judges at the time of sentencing in appropriate cases only and with appropriate conditions, under the control of published guidelines and policy statements of the United States Sentencing Commission. See 18 U.S.C. §§ 3583, 3603(4) (Supp. V 1987). Supervised release is (like special parole, in its day) a "unique and novel concept," *Bifulco, supra*, 447 U.S. at 390, most akin to a consecutive term of probation under the control of the sentencing judge. When the Anti-Drug Abuse Act of 1986 was enacted, about one year prior to the effective date of the Sentencing Reform Act, it established mandatory terms of supervised release to be part of the punishment required for certain controlled substances offenses.

The language of the 1986 Act, its structure and purpose, and its relationship with other laws compel the

---

(Continued from previous page)

references, provisions which have been codified are referred to throughout this brief by their U.S. Code citations, the system by which these statutes are familiar to the judges and lawyers who work with them on a daily basis. Unless there is a relevant difference between the versions in effect at one time or another, edition dates are omitted in the text of the brief.

conclusion that the terms of supervised release mandated by the 1986 Act are not applicable to offenses committed before November 1, 1987. Thus, for the reasons that follow, the judgment below should be affirmed in part (as to the vacatur of the special parole terms) and reversed in part.

#### A. Language and Policy of the Anti-Drug Abuse Act of 1986

The Anti-Drug Abuse Act of 1986 ("ADAA") was signed into law on October 27, 1986. Section 1002 of the ADAA radically amended 21 U.S.C. § 841(b), the statute which sets forth the applicable penalties for criminal violations of the Controlled Substances Act, including the heroin distribution and possession offenses under *id.* § 841(a) for which the petitioner was convicted. Part of the new text for several subsections of § 841(b), as amended by ADAA § 1002, specifies terms of supervised release as part of the punishment.

The provisions affected by ADAA § 1002 include subsections 841(b)(1)(A), governing convictions for possession of at least one kilogram of heroin with intent to distribute,<sup>5</sup> and 841(b)(1)(B), which applies to distribution of less than a kilogram but at least 100 grams of

---

<sup>5</sup> For other drugs the equivalent thresholds are 5 kg. (cocaine mixture), 50 g. (cocaine base such as "crack"); 100 g. (pure PCP [or 1 kilogram of a PCP mixture]), 10 g. (any LSD mixture), or 1000 kg. (marijuana). ADAA § 1302(a) made the same changes in 21 U.S.C. § 960, the penalty statute applicable to controlled substance smuggling offenses.

heroin.<sup>6</sup> The petitioner was sentenced under these provisions on counts 3 and 2 in this case, respectively. Section 1002 does not itself contain any language specifying its effective date, nor does either the ADAA as a whole, nor its Subtitle I.A., the Narcotics Penalties and Enforcement Act of 1986 ("NPEA").<sup>7</sup> Because the statute at issue does not, by its express terms, answer the question presented, it is ambiguous and requires judicial construction.

Like any other issue concerning the meaning or effect of a statute, the question of when a statute became effective requires a determination of Congressional intent. As Justice Miller wrote for a unanimous Court nearly 125 years ago, rejecting a claim that the courts could not look beyond the President's signature line to determine when he signed a bill into law:

We are of the opinion, therefore, on principle as well as authority, that whenever a question arises in a court of law . . . of the time when a statute took effect, . . . the judges who are called upon to decide it have a right to resort to any source of information which in its nature is capable of conveying to the judicial mind a clear and satisfactory answer . . . ; always seeking first for that which in its nature is most appropriate, unless the positive law has enacted a different rule.

<sup>6</sup> Under the 1986 revision of § 841(b)(1)(B) for other drugs the threshold is 500 g. (cocaine), 5 g. (cocaine base), 10 g. (pure PCP [100 g., PCP mixture]), 1 g. (LSD mixture), and 100 kg. (marijuana). Prior to 1986, this category had been codified under § 841(b)(1)(A) by the 1984 amendment. ADAA § 1302(a) made equivalent changes in the provisions of 21 U.S.C. § 960.

<sup>7</sup> ADAA § 1302, making corresponding changes in the penalty sections of the controlled substances import-export law, 21 U.S.C. § 960, likewise lacks a stated effective date.

*Gardner v. Barney, Collector*, 6 Wall. (73 U.S.) 499, 511 (1868).<sup>8</sup> In this case, the language of the 1986 statute as a whole, read in the light of its structure and purpose and its relationship with other laws, compels the conclusion that the terms of supervised release mandated by the 1986 Act are not applicable to offenses committed before November 1, 1987.

These considerations collectively overcome the general principle – long noted in this Court but apparently never the basis of a holding – that where no effective date is specified in the statute, it is deemed effective immediately upon signature by the President. *Town of Louisville v. Portsmouth Savings Bank*, 13 Otto (104 U.S.) 469, 476 (1881) (Harlan, J., collecting cases on related issues; dictum); *Matthews v. Zane*, 7 Wheat. (20 U.S.) 164, 210-11 (1822) (Marshall, C.J.) ("The known rule being, that a statute for the commencement of which no time is fixed, commences from its date . . . "); see generally 2 Sutherland's Statutes and Statutory Construction § 33.06, at 12-16 (Sands 4th ed., rev. N. Singer 1986 & 1990 Cum.Supp.). Although sometimes referred to as a "rule," this canon is no more than a convenient presumption. As Justice Frankfurter put it for a near-unanimous Court:

Generalities about statutory construction help us little. They are not rules of law but merely axioms of experience. . . . For that reason we may utilize, in construing a statute not unambiguous, all the light relevantly shed upon the words and the clause and the statute that express the purpose of Congress.

<sup>8</sup> The "positive law" applicable to this case has not "enacted a different rule." *Id.* See generally 1 U.S.C. §§ 101-111 (no statutory rule for determining effective date).



*United States v. Universal C.I.T. Credit Corp.*, 344 U.S. 218, 221 (1952) (citations omitted). The general "axiom" of immediate effectiveness cannot be mechanically invoked in every case where the plain language does not answer the question, that is, where there is no other date specified.

A presumption of that kind is helpful only when resort to other accepted techniques of statutory construction fail to answer the question but instead leave an irreconcilable ambiguity. In this case, there is powerful evidence to the contrary of the presumptive rule: in the language of the ADAA, in the Act's legislative history, in the whole scheme of sentencing reform, and in the application of this Court's precedent concerning accepted presumptions and the rule of lenity.

When 'interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the Legislature . . . .'*Brown v. Duchesne*, 19 How. [60 U.S.] 183, 194 (1857).

*Kokoszka v. Belford*, 417 U.S. 642, 650 (1974). As a result, the mandatory supervised release provisions of the ADAA should be construed to have a delayed effective date of November 1, 1987.

1. Only by construing November 1, 1987, to be the effective date for all supervised release provisions can the various parts of the ADAA pertaining directly to supervised release and special parole terms be reconciled.

Section 1002 of the Anti-Drug Abuse Act of 1986 ("ADAA"), which enacted the controlled substances

penalty amendment at issue and which uses the phrase "supervised release," does not itself contain an effective date clause. However, the numerous references in other sections of the ADAA to terms of supervised release, read in context, provide strong evidence that Congress did not intend any supervised release provisions to apply to offenses committed prior to the taking effect of the Sentencing Reform Act of 1984 ("SRA") on November 1, 1987. These provisions, taken together, amply refute any presumption of immediate effectiveness arising from § 1002's lack of an explicit effective date clause.

Section 1004 of the 1986 Act, which deals explicitly with the question of when mandatory supervised release became effective, ties that event to the date when the supervised release provision of the SRA will take effect.

That section provides:

**Sec. 1004. Elimination of Special Parole Terms.**

(a) The Controlled Substances Act and the Controlled Substances Import and Export Act are amended by striking out "special parole term" each place it appears and inserting "term of supervised release" in lieu thereof.

(b) The amendments made by this section shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

ADAA § 1004(a) does not necessarily resolve the question of when the supervised release terms mandated by § 1002 are first required. By its terms, § 1004 applies only to places in the Controlled Substances and Import-Export Acts where supervised release was to *substitute* for special parole, that is, where the phrase "special parole term" actually "appears" as part of the penalty for the offense. But the penalty statute in effect prior to the 1986 Act for the level of offenses for which petitioner Gozlon

was convicted, 21 U.S.C. § 841(b)(1)(A) (Supp. III 1985), had not provided for special parole terms since that statute's amendment in 1984. Thus, ADAA § 1004 does not literally apply to this petitioner's case. Even so, the words of the statute must not be so over-precisely construed as to defeat its purpose. See *Philbrook v. Glodgett*, 421 U.S. 707, 713-14 (1975). While the terms of § 1004 are highly relevant, they are not conclusive. Related parts of the statute contain other evidence of the effective date.

A reading of the related portions of the Act shows that all the controlled substances penalty sections calling for supervised release became effective when that mechanism would be created, defined, and controlled by guidelines, that is, on November 1, 1987, the effective date of the Sentencing Reform Act. See *Sullivan v. Everhart*, 494 U.S. \_\_\_, 108 L.Ed.2d 72, 82 (1990) ("at least reasonable, if not necessary" that different sections of same Act be read *in pari materia*). There is no good reason to think that Congress intended the penalty provisions amended by the 1986 Act to be subject immediately to a then-undefined penalty called supervised release.

The great majority of the lower courts have read § 1004 to mean that no supervised release would be in effect until November 1, 1987. See n.3 above. This prevailing construction is not inconsistent with the language of § 1004(a). That provision, written in the present tense, can be read to mean that supervised release is to be substituted for special parole as of November 1, 1987, in each place it "appears" at the present time, *i.e.*, in the law in effect on October 26, 1986, prior to the enactment of the ADAA. So construed, all existing provisions for special parole are transformed into requirements for supervised

release at the same time, the effective date of the supervised release provision of the Sentencing Reform Act.<sup>9</sup>

The court below offered a narrower interpretation of § 1004. J.A. 50-51 n.4; 894 F.2d at 1405 n.4. Under this reading, the present tense in the word "appears" in § 1004(a) is understood to refer to the specified effective date, November 1, 1987, rather than to the date of enactment, October 27, 1986. Thus, supervised release was to substitute for special parole each place the words "special parole term" still existed as of November 1, 1987, in the Controlled Substances Act, 21 U.S.C. §§ 801-904, and the cognate Import-Export Act, *id.* §§ 951-971, as amended at any time until that date. By virtue of § 1002 of the 1986 Act, according to the court below, subsections (A), (B) and (C) of § 841(b) would therefore not come within the delay provision of ADAA § 1004(b).

The court of appeals in this case concluded that the purpose of § 1004 was to make a transition to supervised release in those statutes where special parole was still called for after the enactment of the ADAA, because those sections had provided for special parole terms since their initial enactment and had not since been amended in pertinent respects. Under this reading of § 1004(a), according to the court of appeals, the penalty statutes to be affected by the implementation of mandatory supervised release as of November 1, 1987, were limited to 21 U.S.C. §§ 841(b)(1)(D), 841(b)(2), 845, 845a(a) and

<sup>9</sup> Under that reading, mandatory terms of supervised release would be held to have supplanted special parole terms as of November 1, 1987, for offenses punishable under 21 U.S.C. §§ 841(b)(1)(B),(C) & (D), 841(b)(2), 845(a) & (b), 845a, and 960(b)(2),(3) & (4).



960(b)(4),<sup>10</sup> while offenses punishable under the rest of 21 U.S.C. § 841(b)(1)'s subsections, § 845a(b) and § 960(b)(1)-(3) were subject to supervised release as of October 27, 1986. The lower court's reading of § 1004, however, simply begs the question of whether the penalty-revising sections that mention supervised release of the ADAA were intended to be immediately effective. If the lower court was wrong in assuming that they were, then § 1004 would operate to make them effective on November 1, 1987.

The more inclusive interpretation of § 1004(a), under which "appears" refers to the date of enactment rather than to the delayed effective date, makes more sense. As the Fifth Circuit succinctly put the matter in the leading case on this subject, "[T]ying the effective date of the change [from special parole to supervised release] to the effective date of the implementing statute would seem the more logical arrangement." *United States v. Byrd*, 837 F.2d 179, 181 n.8 (1988). This practical interpretation of § 1004 is also the only reading which is consistent with

<sup>10</sup> The lower court included 21 U.S.C. § 845b among the offenses for which "special parole was retained." *Id.* Section 845b, however, which penalizes the use or employment of minors in the commission of drug crimes, is a new offense created by § 1102 of the ADAA; it never provided explicitly for a special parole term. On the other hand, ADAA § 1103(b) adds a mention of the new § 845b to § 841(c), which is the provision defining special parole which was to be repealed as of November 1, 1987, in that subsection's list of statutes under which special parole terms might be imposed. Thus, to avoid rendering ADAA § 1103(b) completely meaningless, it is necessary to read the phrase "supervised release" as "special parole" with respect to § 845b offenses committed prior to November 1, 1987.

the rest of the ADAA's related provisions. As this Court reiterated in *Mountain States Telephone & Telegraph Co. v. Pueblo of Santa Ana*, 472 U.S. 237 (1985), "'a statute should be interpreted so as not to render one part inoperative.'" *Id.* at 249, quoting *Colautti v. Franklin*, 439 U.S. 379, 392 (1979). Only reading a November 1, 1987, effective date into sections 1002 and 1004 can avoid multiple internal inconsistencies and meaningless penalty language in the ADAA.

For example, 21 U.S.C. § 845, which prohibits distribution of drugs to minors, necessarily retained its requirement for the imposition of special parole terms after 1986, because its penalty provisions were not amended by the ADAA (other than by § 1004). This statute thus required, both before and for a year after the enactment of the ADAA, that the person to be penalized receive "at least twice any special parole term authorized by [21 U.S.C. § 841(b)], for a first offense involving the same controlled substance . . . ." 21 U.S.C. § 845(a). If special parole were replaced by supervised release as of October 27, 1986, for offenses punishable under subsections 841(b)(1)(A), (B), and (C), or any of them, the cross-references of §§ 845(a) and 845(b) demanding at least twice the special parole term provided for in those subsections would be nullified.

Because this construction is unnecessary, it is impermissible. See *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979) ("In construing a statute we are obliged to give effect, if possible, to every word Congress used."). Since the "special parole" language in § 845 unambiguously changed over to "supervised release" as of November 1, 1987, pursuant to ADAA § 1004, inferring a delayed

effective date for all of § 841(b)'s supervised release provisions can preserve the necessary relationship between the two statutes. It is therefore the correct interpretation of ADAA § 1002.

The court of appeals' opinion also overlooks several especially anomalous results of its reading of ADAA § 1004 as applied to 21 U.S.C. § 845a, which penalizes drug distribution within 1000 feet of a school. The penalty for that aggravated offense is also expressed as a multiple of the penalty provided in § 841(b). Section 1104(c) of the ADAA rewrote the penalty clauses of § 845a(b), which is the second offender penalty enhancement provision of § 845a, so as to include, *inter alia*, terms of supervised release, without specifying an effective date. See also ADAA § 1866(b) (making different change to § 845a(b) penalty language, but also providing for supervised release). The ADAA made no equivalent change, however, to § 845a(a), the first-offender penalty, which therefore continued to call for "at least twice any special parole term authorized by" § 841(b). Thus, the lower court's reading, as it does with respect to § 845 offenses, would nullify the statute's special parole cross-reference for first offenders under § 845a between October 27, 1986, and November 1, 1987.<sup>11</sup> See *United States v. Levario*, 877 F.2d 1483, 1488 & n.11 (10th Cir. 1989) (recognizing interdependency of § 845a and § 841(b) in this context). Again, this bizarre and inexplicable result can be avoided by the simple technique of construing the changes to 21 U.S.C. § 845a(b), effected by ADAA

<sup>11</sup> The one exception would be with reference to subsection 841(b)(1)(D), which governs only moderate-size marijuana cases.

§§ 1104(c) and 1866(b), along with the amendments to § 841(b) effected by ADAA § 1002, as being effective November 1, 1987.

Two other aspects of the lower court's interpretation as it affects punishment under 21 U.S.C. § 845a for offenses committed between October 27, 1986, and November 1, 1987, lead to the same conclusion. Section 1866(c) of the ADAA made a change of terminology in § 845a(c)'s statement of parole ineligibility under that statute, but even after the change, subsection 845a(c) allowed parole release after service of a mandatory minimum term of imprisonment. Thus, the changes in § 845a effected by the ADAA plainly contemplate parolability on such sentences, even for offenses committed after October 27, 1986. Yet parole and supervised release are mutually incompatible concepts in sentencing law. Sections 1104(c), 1866(b) and 1866(c) of the ADAA can only be reconciled if the first two, which deal with supervised release, are understood to have effective dates of November 1, 1987.

The same conclusion flows from awareness of a related statute enacted just two weeks after the ADAA, which also contained an amendment to 21 U.S.C. § 845a. See *New York Telephone Co. v. New York State Dept. of Labor*, 440 U.S. 519, 540-41 (1979) (related statutes considered at same time and passed within weeks of each other construed together); *Sullivan v. Finkelstein*, 496 U.S. \_\_\_, 110 L.Ed.2d 563, 578 (June 18, 1990) (Scalia, J., concurring: subsequently enacted statute on same subject is *in pari materia* and "should be interpreted harmoniously"). On November 10, 1986, the President signed the Criminal Law and Procedure Technical Amendments Act of 1986, Pub.L. 99-646, 100 Stat. 6502. Section 28 of that Act



amends § 845a(b) "by inserting 'parole' after '(2) at least three times any special'." This is the very phrase that § 1866(b) of the ADAA replaced with a reference to supervised release. Treating ADAA § 1866(b) as immediately effective thus renders yet another statute nugatory and meaningless. Recognizing an effective date of November 1, 1987, for the transition to supervised release as part of the punishment for violations of § 845a, on the other hand, gives consistent meaning to the two provisions amending the same subsection.

There are other indications in the 1986 Act which support the conclusion that Congress did not intend supervised release to apply to pre-November 1987 offenses. See *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 138 n.11 (1985) (various provisions of same Act should be read *in pari materia*). As 18 U.S.C. § 3583 was originally drafted and enacted as part of the Sentencing Reform Act of 1984 ("SRA"), a violation of the conditions of supervised release was to be treated as a contempt of court. Sentencing Reform Act of 1984, Pub.L. 98-473, § 212(a)(2), 98 Stat. 1999, establishing 18 U.S.C. § 3583(e)(3). Section 1006(a)(3) of the ADAA, however, added a provision for revocation of supervised release, to be administered under the Federal Rule of Criminal Procedure governing revocation of probation and in accordance with U.S. Sentencing Commission policy statements. Under § 1006(a)(4), this amendment to § 3583 was not to be effective until the rest of the SRA came into play. Congress is not likely to have intended that terms of supervised release be imposed for offenses committed

between October 27, 1986, and November 1, 1987, but that these terms could never be revoked.<sup>12</sup>

Likewise, ADAA subsections 1003(a)(1) and (2) make changes to 21 U.S.C. §§ 841(b)(1)(D) and 841(b)(2) without mentioning their special parole provisions or supervised release; thus, a November 1, 1987, changeover pursuant to § 1004 applies to these less serious offenses. Under the lower court's reading of the statute, the supervised release provisions of § 841(b)(1)(D), would go into effect at a different time from those of subsections 841(b)(1)(A), (B) and (C), of which it is a lesser included level of offense. This hardly seems likely to be what Congress intended, especially since ADAA § 1002 has no subsections; it sets out changes to (b)(1)(A), (B), and (C) all as part of same subdivision of the 1986 Act. See *United States v. Morton*, 467 U.S. 822, 828 (1984) ("We do not . . . construe statutory phrases in isolation; we read statutes as a whole."). An analysis that calls for varying effective dates for different subparagraphs within the same section of the statute is certainly less desirable. Where, as here, it can be easily and reasonably avoided, it should be.<sup>13</sup>

<sup>12</sup> Section 3583, like the rest of the SRA, is not applicable to any offense committed before November 1, 1987. SRA § 235(a)(1); Sentencing Act of 1987, Pub.L. 100-182, § 2(a), 101 Stat. 1266. The unwieldy alternative of holding a supervised-release violator in contempt was repealed effective November 18, 1988, and the revocation clause accordingly renumbered from (e)(4) to (e)(3). Pub.L. 100-690, § 7108, 102 Stat. 4418.

<sup>13</sup> This same conclusion applies equally to the analysis of those circuits which have held that ADAA § 1002's provision for supervised release under 21 U.S.C. § 841(b)(1)(A) went into

(Continued on following page)

In short, the sentencing regime created by the result reached below is internally highly inconsistent. This Court has often stated that it will not accord to Congress an intention to create absurd results, absent clear statutory language compelling that result, *United States v. Turkette*, 452 U.S. 576, 580 (1981), and perhaps even despite such language. The Court has likewise recognized that "internal inconsistencies in the statute must be dealt with." *Id.* *United States v. Turkette*, 452 U.S. 576, 580 (1981). Even "the 'plain meaning' rule [must] give way where its application would produce a futile result, or an unreasonable result 'plainly at variance with the policy of the legislation as a whole.'" *Shapiro v. United States*, 335 U.S. 1, 31 (1948) (source of quotation omitted). See also *United States v. Albertini*, 472 U.S. 675, 697 (1985) (Stevens, J., dissenting) ("No rule of construction requires that we attribute to Congress an intent which is at odds with its own design and which results 'in patently absurd consequences . . . ' [citation omitted]"). The only reasonable construction of the ADAA's silence as to the effective date of the mandatory terms of supervised release that it creates is to find that they all became effective for offenses committed on or after November 1, 1987.

**2. None of the innovative penalty provisions of the ADAA can sensibly be read as applying to pre-November 1987 offenses.**

Just as a reading *in pari materia* of all of the sections of the ADAA dealing with supervised release shows that

---

(Continued from previous page)

effect immediately, while the transition under subsections (b)(1)(B) and (C) were delayed to November 1, 1987. E.g., *United States v. Figueroa*, 898 F.2d 825 (1st Cir. 1990).

the provisions for supervised release in § 1002 were not effective prior to November 1, 1987, so the same conclusion follows from an analysis of § 1002's provisions abolishing parole and establishing mandatory minimum terms of imprisonment. Thus, the supervised release provisions established in § 1002 did not apply to the petitioner's offense, committed in February 1987, for the additional reason that § 1002 as a whole had not yet become effective at that time.<sup>14</sup>

The revision of 21 U.S.C. § 841(b) effected by § 1002 of the ADAA not only mandated terms of supervised release but also created mandatory minimum sentences of imprisonment for offenses punishable under the newly-redefined 21 U.S.C. §§ 841(b)(1)(A) and (B). Under these provisions, probation and suspension of sentence are forbidden; parole is also abolished. Petitioner Gozlon was charged with such offenses in counts 3 and 2 respectively. Other sections of the ADAA created mechanisms to encourage accused persons to cooperate with the authorities in order to avoid the mandatory minimums created

---

<sup>14</sup> The petitioner did not challenge below or in his petition for certiorari the effectiveness as of the date of his offenses of the ADAA's provisions for mandatory minimum sentences or abolishing parole. Accordingly, he advances this argument before this Court, as stated in the text above, solely as a basis for answering the question presented in his favor. Nevertheless, this Court has the power, which the petitioner would urge it to exercise, to vacate the sentences on Counts 2 and 3 generally, on the ground that an illegal sentence, or one imposed under a fundamental misapprehension of the governing law, is plain error under this Court's Rule 24.1(a). See *Bozza v. United States*, 330 U.S. 160, 166-67 (1947).



by § 1002, see ADAA §§ 1007(a),<sup>15</sup> 1009(a),<sup>16</sup> but those ameliorative sections by their terms are not applicable to offenses committed before November 1, 1987. *Id.* §§ 1007(b), 1009(b). As sections of the same Act dealing with the same subject matter, §§ 1007 and 1009 should be construed *in pari materia* with the mandatory minimum sentence provisions of § 1002. *Sullivan v. Everhart*, 424 U.S. \_\_\_, 108 L.Ed.2d 72, 82 (Feb. 21, 1990); see also *United States v. Morton*, 467 U.S. 822, 828 (1984).

If § 1002 was effective immediately, those sentenced for crimes committed between October 27, 1986, and November 1, 1987, could never receive waivers of the mandatory minimum sentencing provisions, while later offenders could. Congress could not rationally have intended to enact mandatory minimum terms by means of ADAA § 1002, effective immediately, subject to no exceptions, and in the same Act and at the same time provide that these minimums might be waived, on

---

<sup>15</sup> ADAA § 1007(a) added a new provision to the Sentencing Reform Act, 18 U.S.C. § 3553(e), authorizing a judge at the time of sentencing, upon motion of the government, "to impose a sentence below a level established by statute as [a] minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense." See also *id.* § 1008 (calling upon Sentencing Commission to promulgate guidelines to implement § 3553(e)).

<sup>16</sup> The SRA, as enacted in 1984, contained a provision, § 215(b), which created a new text for Fed.R.Crim.P. 35(b), effective November 1, 1987, allowing a sentence to be reduced within one year after imposition upon government motion disclosing substantial assistance to the authorities. ADAA § 1009(a) amended that provision to permit such a reduction to result in a sentence below an otherwise applicable mandatory minimum.

motion of the government reporting the defendant's substantial cooperation with the authorities – but only for cases arising more than 12 months later.<sup>17</sup> *United States v. Preston*, 1990 WestLaw 80690 (W.D.Va., filed May 31, 1990) (Crim. No. 87-85, typed op. at 2-13); see also *Hernandez Rivera v. United States*, 719 F.Supp. 65, 66 (D.P.R. 1989). To avoid this patently unfair and implausible result, all of § 1002 should be construed as having an effective date of November 1, 1987, to comport with §§ 1007 and 1009.

This reading of the 1986 Act, delaying the effective date of all the amendments to various penalty sections, is further supported by the terms of ADAA § 1102, creating 21 U.S.C. § 845b, a new offense prohibiting, *inter alia*, the employment or use of persons under the age of 18 to violate a controlled substances law, which bears an enhanced penalty expressed as a multiple of that provided in § 841(b). Subsection 845b(e) creates a unusual form of mandatory minimum, based on the existing "school yard statute," 21 U.S.C. § 845a(c), and different from that established under any of the other ADAA amendments, which allows parole release after service of a minimum sentence. Since all parole was to be abolished

---

<sup>17</sup> Congress may have attempted to remedy this anomaly in the Sentencing Act of 1987, Pub.L. 100-182, § 24, 101 Stat. 1271, which extends the benefits of 18 U.S.C. § 3553(e) and "new" Rule 35(b) to "offense[s] committed before the taking effect of [the new sentencing] guidelines." The same Act also provides, however, that "The amendments made by this Act shall apply with respect to offenses committed after the enactment of this Act." *Id.* § 26. It thus seems that Congress is no less likely to create ambiguities and contradictions when it does articulate effective date provisions than when it does not.

for offenses committed on or after November 1, 1987, this new offense must have an immediate effective date.<sup>18</sup> Cf. *Warden v. Marrero*, 417 U.S. 653 (1974) (considering problems arising out of 1970 drug sentencing conversion from nonparolable to parolable sentences). The nonparolable penalty provisions created by § 1002, by contrast, are all of the type that was to exist under the SRA,<sup>19</sup> with no internal indication of immediate effectiveness other than the general canon. They should thus be deemed effective with the SRA, not immediately upon enactment.

Construction of these other provisions of the ADAA *in pari materia* with § 1002 shows that the entire section, necessarily including its provisions for supervised release, did not go into effect until November 1, 1987.

**3. The policy behind the change from special parole to supervised release was sentencing reform, not drug penalty enhancement.**

Inferring an immediate effective date for the ADAA's supervised release provisions is not necessary to carry out any Congressional policy with respect to sentencing in controlled substances cases. Cf. *Bifulco v. United States*, 447 U.S. 381, 387, 399-401 (1980) (examining motivating

<sup>18</sup> Section 845b(b) includes supervised release among the penalties to be imposed for a violation of § 841b(a). Because there is no prior version of § 845b calling for special parole, the question whether that supervised release provision was intended to be effective immediately is quite similar to that involved in the petitioner's case, arising under § 841(b)(1)(A). But see footnote 10 above.

<sup>19</sup> All of the offenses created by ADAA § 1002 that carry mandatory minimums explicitly bar parole for the full term of the maximum sentence imposed. See J.A. 38; *United States v. Levy*, 865 F.2d 551, 559 (3d Cir. 1989) (in banc).

policies of the Comprehensive Drug Abuse Prevention and Control Act in aid of determining Congress's intent as to whether special parole term was authorized as part of punishment for drug conspiracy offense); accord, e.g., *Barrett v. United States*, 423 U.S. 212, 217-19 (1976). Two rationales appear to underlie the various drug penalty amendments of 1986: (1) the enhancement of available punishments, and (2) refinement of the pending process of sentencing reform. The addition of supervised release in place of special parole as part of the penalty for controlled substance offenses in the ADAA furthered the policy of sentencing reform rather than sentence enhancement, as supervised release is not an inherently more severe penalty than special parole.

The characteristics of special parole, a novel form of enhanced and extended post-incarceration supervision unique to controlled substances cases under pre-Sentencing Reform Act law, were (in part) described in 21 U.S.C. § 841(c).<sup>20</sup> A special parole term is an additional, consecutive period of parole following an offender's release from prison and service of the balance of his or her maximum term under parole supervision. It is administered and supervised by U.S. Probation Officers on behalf of the U.S. Parole Commission. 28 C.F.R. §§ 2.38, 2.57 (1989). See also 18 U.S.C. § 3655 (1982) (6th para.). If an offender violates its terms, special parole may be revoked, in which event the entire specified term is added to the full maximum of the underlying sentence and the parolee is

<sup>20</sup> See also 21 U.S.C. § 960(c), as created by the 1970 Act, establishing special parole terms as part of the punishment for criminal violations of the Controlled Substances Import and Export Act.



returned to prison to complete service of that extended maximum, subject to possible reparole.

True, the minimum length of any mandatory term of supervised release in a controlled substances case is somewhat longer than the comparable minimum special parole term, and the statute allows a term to be extended while it is being served. 18 U.S.C. § 3583(e)(2). And if supervised release is revoked, there is no provision in the law for rerelease, whereas a prisoner serving a revoked special parole term may be paroled again. 28 C.F.R. § 2.57(c,d) (1989). On the other hand, special parole terms have no specified maximum, and the courts have therefore uniformly held that in appropriate cases special parole may continue for life. See *In re Whittenburg*, 680 F.Supp. 1160, 1161 (S.D. Oh. 1987) (collecting cases). It is not settled whether the mandatory terms of supervised release in controlled substances cases are limited by the statute which caps them at five years, 18 U.S.C. § 3583(b).

Moreover, even if the initial term imposed is the same, a special parole term, once revoked, may result in longer incarceration than a revoked term of supervised release. This is because when special parole is revoked, the total term is *added* to the unserved portion of the underlying term of imprisonment and the prisoner may then face up to the total unserved balance with no requirement that s/he be reparaed, 21 U.S.C. §§ 841(c), 960(c) (prospectively repealed), whereas when supervised release is revoked, only that term is served, subject to a three year cap except in potential life-sentence cases. 18 U.S.C. § 3583(e)(3) (referring to classification of offenses found in *id.* § 3559).

Since supervised release is not necessarily a harsher sanction than special parole, it appears that Congress

more likely thought it was fostering and advancing its scheme of sentencing reform than that it was enhancing maximum sentences when it substituted supervised release for special parole in the final changes to the 1986 Act. The replacement of parole, including special parole, with supervised release was part of that reform. S.Rep. No. 98-225, 98th Cong., 1st Sess. 122-25 (1983); Slawsky, "Looking at the Law," 53 Fed.Prob. 69, 69-70 (June 1989). In order to further that policy, the supervised release provisions would have to have become effective when sentencing reform became effective: November 1, 1987.

An understanding of this policy rationale undercuts the court of appeals' suggestion that Congress must at least have intended supervised release to become effective for sentences imposed for post-ADAA conduct, such as petitioner Gozlon's, which would have come under the prior version of 21 U.S.C. § 841(b)(1)(A) and thus not be subject in the interim to a special parole term. Congress was certainly cognizant that the same Parole Commission that would have to administer any special parole terms imposed as part of a sentence for an offense committed between October 1986 and November 1987 was due to be phased out in 1992. See SRA § 235(b)(1)(A). That is before many such terms would even have begun, given the lengthy prison sentences being mandated in the 1986 legislation. Thus, Congress may well have enacted the new sentencing provisions with the understanding that some of them, at least, would not be able to become effective until the rest of the delayed sentencing reform came into being on November 1, 1987.

The existence of such gaps is not new in connection with revisions of criminal statutes; the proper judicial response is not to reach out for a "correction" but rather



to exercise restraint. Out of respect for a co-equal branch of government, this Court should not conclude, unless there is no other explanation, that the inclusion of supervised release as part of the 1986 amendments was simply a failure of clear thinking in the legislative process.

Particularly in the administration of criminal justice, a badly drawn statute places strains on judges. . . . The temptation to exceed our limited judicial role and do what we regard as the more sensible thing is great, but it takes us on a slippery slope. Our duty, to paraphrase Mr. Justice Holmes in a conversation with Judge Learned Hand, is not to do justice but to apply the law and hope that justice is done.

*Bifulco*, *supra*, 447 U.S. at 401-02 (Burger, C.J., concurring) (citations omitted). In this case, Congress must be deemed to have understood and accepted that a year's delay in implementing its penalty changes was part and parcel of phasing out a doomed and obsolete form of sentencing, rather than perpetuate it. This conclusion becomes all the more clear when the October 1986 penalty amendments are viewed as part of a continuing process of statutory revision and in conjunction with the related provisions of the Sentencing Reform Act, passed in 1984, but not due to become effective until November 1, 1987.

#### **B. The History of Controlled Substances Penalty Reform and the Legislative History of the 1986 Amendments.**

The history of the enactment of § 1002 of the 1986 ADAA-NPEA, while essential for understanding how the question presented in this case came to arise at all, is helpful in resolving that question only to a limited degree. Cf. *Taylor v. United States*, 495 U.S. \_\_\_, 109

L.Ed.2d 607, 616-22 (May 29, 1990); see *id.* at 630 (Scalia, J., concurring). Understanding the history may be helpful, for example, in deducing the policy choices that Congress sought to implement in this law. Reviewing the history may also assist in ascertaining the prior law and thus in resolving what sentencing provisions do apply to offenses committed in the year between October 27, 1986, and November 1, 1987, the period when § 1002 and similar provisions of the ADAA were on the statute books but not yet effective.

#### **1. History of controlled substances penalty reform.**

Sections 841(a) and (b) of Title 21 Sections 841(a) and (b) of Title 21, United States Code, were created in 1970 by the Controlled Substances Act, Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236, 1261-62. Subsection 841(a)(1) criminalized the manufacture or distribution (or possession with intent to do either of these) of controlled substances as defined in a five-part drug identification scheme which listed the various drugs in schedules. Section 841(b)(1)(A) provided the penalties for violations of subsection (a)(1) involving "narcotic drugs," a term defined to include heroin and cocaine.<sup>21</sup> As part of the punishment in every case, the 1970 statute required a "special parole term" of at least a specified number of years, up to an unstated maximum. See generally *Bifulco v. United States*, 447 U.S. 381 (1980).

<sup>21</sup> Section 841(b)(1)(B) contained the penalties for non-narcotic drugs including marijuana.

On October 12, 1984, the President signed into law the Comprehensive Crime Control Act of 1984 ("CCCA"), Pub. L. No. 98-473, 98 Stat. 1837. Two chapters or titles of the CCCA are pertinent here: Chapter V, called the Controlled Substances Penalties Amendments Act of 1984 ("CSPAA"), and Chapter II, the Sentencing Reform Act ("SRA"). Section 502(1) of the CSPAA, 98 Stat. 2068, amended 21 U.S.C. § 841(b) by dividing the penalties for domestic controlled substance possession, distribution and manufacturing offenses into two subsections, based on the quantity of drugs involved. The CSPAA thus created a new § 841(b)(1)(A) for higher volume cases like petitioner's,<sup>22</sup> which, *inter alia*, increased the maximum penalty of imprisonment from 15 years to 20. Section 841(b)(1)(A), as amended in 1984, no longer provided for a special parole term as part of the applicable penalty, although subsections (b)(1)(B) and (C) retained such terms.

Chapter II of the CCCA, the Sentencing Reform Act of 1984 ("SRA"), provided for radical changes in all federal criminal sentencing. See generally *Mistretta v. United States*, 488 U.S. 361 (1989). The new system of limited discretion, controlled by guidelines and policy statements to be developed by a permanent commission and subject to appellate review, also called – among many other changes – for abolition of parole. An entirely new form of post-confinement monitoring was introduced, called

<sup>22</sup> The new § 841(b)(1)(A), as amended in 1984, applied, *inter alia*, to heroin offenses involving 100 grams or more, and to cocaine offenses of a kilogram or more. A new § 841(b)(1)(B) pertained to smaller-scale heroin and cocaine offenses and 50-kilogram-or-more marijuana offenses.

"supervised release." Unlike parole (or special parole) a prisoner would not be subject to "supervised release" in every case, for a period of time defined by the unserved portion of the prison sentence. Instead, judges were to decide at the time of sentencing which defendants appeared to need such supervision upon release and to provide for it, in appropriate cases, with a term of stated length, to be administered by the court itself. A violation of the conditions of supervised release would not result in revocation, but rather would be treated as a contempt. These provisions were to be codified, as of the effective date of the Sentencing Reform Act, in 18 U.S.C. § 3583.

In connection with the abolition of regular parole, § 224(a) of the SRA also contained a provision deleting all provisions for special parole terms. 98 Stat. 1987, 2030. Like the rest of the SRA, this provision initially stated that it would become effective on the first day of the first month more than two years after passage (and provided that certain other conditions had been satisfied by that date), that is, on November 1, 1986, SRA § 235(a)(1), but Congress later delayed the effective date until November 1, 1987. Sentencing Reform Amendments Act of 1985, Pub.L. 99-217, § 4, 99 Stat. 1728.

Congress spoke again on sentencing in controlled substances cases in 1986, when it passed the NPEA and related provisions of the Anti-Drug Abuse Act. Section 1002 of the ADAA once more redefined § 841(b)'s penalty categories. The newly-reframed subsection 841(b)(1)(A), as amended in 1986, contained the penalties for offenses involving, *e.g.*, one kilogram or more of heroin, five kilograms or more of cocaine, and at least 1000 kilograms of marijuana. Subsection (b)(1)(B), in its new 1986 version, applied to, among others, offenses involving 100 grams or



more of heroin, 500 grams or more of cocaine, or 100 kilograms or more of marijuana. Subsection (b)(1)(C), as amended, pertained to offenses involving any smaller amounts of each drug (with the exception of less-than-50-kilogram marijuana cases, covered in section 841(b)(1)(D), which was not amended by the ADAA). As enacted, section 1002 (amending 21 U.S.C. §§ 841(b)(1)(A), (B), and (C)) provided, *inter alia*, for mandatory terms of supervised release as part of those sentences.<sup>23</sup>

## 2. Legislative history of the 1986 penalty amendments.

The history of the 1986 legislation reveals that Congress's inclusion of the words "supervised release" in § 1002 of the ADAA came late in the reconciliation process. The somewhat different bills which had initially passed each House of Congress both contained provisions for special parole terms in their penalty reform sections, with a transition to supervised release to occur when the new SRA scheme came into being. No direct explanation exists in the available sources of legislative history why the final bill to be enacted provided instead for supervised release in the language of § 1002. Thus, one of two explanations seems to be required: either there was an error of drafting in the course of final revisions, or Congress decided at the last minute, without stated

<sup>23</sup> The process of sentencing revision and reform did not stop with the ADAA in 1986. Pertinent excerpts from the Criminal Law and Procedure Technical Amendments Act of 1986, the Sentencing Act of 1987, the 1988 anti-drug act, and others are referred to in this Brief where appropriate.

explanation, not to reinstate special parole for most controlled substance offenses when that form of post-release supervision was due to be abolished in about one year anyway.

As the First Circuit reported in detail in its decision in *United States v. Ferryman*, 897 F.2d 584, 586-87 (1990), the bill that eventually became the Narcotics Penalties and Enforcement Act of 1986<sup>24</sup> was introduced in the House of Representatives on September 8, 1986, as H.R. 5484. This bill, which passed the House on September 11, 1986, contained mandatory special parole terms as part of the penalty for all categories of heroin and cocaine offenses. See 132 Cong.Rec. H6459 (daily ed. Sept. 8, 1986); H6608-6611; 6628-32 (daily ed. Sept. 11, 1986).

Subsection (b) of section 608 of the bill, entitled "Conforming Prospective Amendments," would have deleted the special parole terms from the applicable penalty provisions respecting heroin, cocaine, and marijuana offenses, effective on the date that § 224 of the Comprehensive Crime Control Act of 1984 (part of the Sentencing Reform Act of 1984, making conforming amendments to the Controlled Substances Act) was to become effective. Additionally, a House Report concerning the bill described the amendments eliminating the special parole terms as "conforming prospective amendments to repeal the provisions authorizing special parole terms when the new Federal sentencing laws take effect." H.Rep. No. 845, 99th Cong., 2d Sess. 20 (1986). The bill did not specify an effective date for the penalty provisions. Nevertheless,

<sup>24</sup> Subtitle A of Title I (Anti-Drug Enforcement) of the ADAA, §§ 1001-1009, 100 Stat. 3207, 3207-2 through 3207-8 (1986).



this history shows that the House of Representatives initially intended the ADAA to revise and recodify all the major controlled substances penalty provisions, as a result of which all would contain special parole terms applicable to all offenses until the Sentencing Reform Act of 1984 became effective: November 1, 1987.

A few days after H.R. 5484 was passed, the President submitted to Congress a partially different version of an Act that also enhanced penalties for drug offenses. *Ferryman, supra*, 897 F.2d at 587 (citing 22 Comp.Pres.Doc. 1192-1194 (Sept. 15, 1986)). The Administration's version, which was introduced in the Senate as S. 2878, see 132 Cong. Rec. S13648-52 (daily ed. Sept. 25, 1986); S15205 (daily ed. Oct. 6, 1986), also provided for mandatory terms of special parole for heroin, cocaine, and other serious drug offenses. *Id.* See *Ferryman, supra*, at 587 (noting that Section 507 of Administration's proposal stated that, upon the date that sentencing reform became effective (November 1, 1987), 'special parole term[s]' would be supplanted by 'term[s] of supervised release.'). On September 30, 1986, the Senate passed S. 2878 and returned it to the House. See 132 Cong. Rec. S13779 (daily ed. Sept. 26, 1986); S 14302 (daily ed. Sept. 30, 1986).

The House concurred in the Senate amendment to H.R. 5484, but with certain pertinent further amendments, and resubmitted it to the Senate. See 132 Cong. Rec. H9479-84 (daily ed. Oct. 8, 1986). As in the Senate's version (S. 2878), this House version included a section designated § 1002, which revised the penalty provisions and included mandatory special parole terms for the serious offenses; thus, both houses had then passed versions of the bill reestablishing special parole, not supervised release, as part of the penalty to be effective until

November 1, 1987. This penultimate House version placed the changeover provision from special parole to supervised release in section 1004; it had appeared in section 1007 in previous versions of the bill. The Senate passed the bill received from the House, with certain amendments not relevant here, on October 15, 1986. See 132 Cong. Rec. S16489, 16502 (daily ed. Oct. 15, 1986). No amendment was proposed or added changing the special parole terms provided to terms of supervised release.

In the Act's "final rush to passage," *Ferryman, supra*, 897 F.2d at 587,<sup>25</sup> between October 15 and 17, 1986, the words "supervised release" were for the first time inserted in place of "special parole" in certain parts of section 1002 of the Act, with no explanation. The transition provision of § 1004, however, was not changed. See 132 Cong. Rec. H 11219-22 (daily ed. Oct. 17, 1986). The House and Senate finally both approved the bill in this form. See 132 Cong. Rec. H10777, 10787, S16915, 16921 (daily ed. Oct. 17, 1986). The President signed the ADAA on October 27, 1986.

Because Congress did not offer any explanation for its eleventh hour substitution of the words "term of supervised release" for "special parole term," its actual reasons for doing so are unknown. It may well be that the law that applied to the petitioner at sentencing "is not the product of model legislative deliberation or draftsmanship." *Scarborough v. United States*, 431 U.S. 536, 570

<sup>25</sup> See also 132 Cong. Rec. S. 16489 (daily ed. Oct. 15, 1986) (comments by Senator Dole concerning the Senate's desire to "try to reach some agreement on this antidrug bill so we could pass it, get it back to the House, and make certain we have a drug bill this year[]"; seeking consent that only a few amendments be permitted to be offered to H.R. 5484).

(1977). But even a " 'last-minute' floor amendment, 'hastily passed, with little discussion, no hearings, and no report,' " is entitled to be enforced according to its terms as statutory law, not disregarded, disparaged, or judicially rewritten. *United States v. Batchelder*, 442 U.S. 114, 120 (1979), quoting *United States v. Bass*, 404 U.S. 336, 344 (1971), and *Scarborough, supra*, 431 U.S. at 569.

Parts A.1. and 2. of this Brief have already shown that the language of the Act as a whole requires its supervised release provisions to become effective only on November 1, 1987. In the absence of clear evidence that the change was the result of a mistake, this Court simply must presume that Congress intended to do what it did. Cf. *Bifulco v. United States, supra*, 447 U.S. at 390 n.8 (viewing as an "assum[ption]" government's explanation of statutory anomaly as "carelessness in draftsmanship" and expressing reluctance to accept it). Such a presumption in this case yields a delayed effective date for all supervised release provisions of November 1, 1987, a result which is also more consistent with the impending implementation of the 1984 Sentencing Reform Act.

**C. The Scheme of Sentencing Reform: the 1986 ADAA Must Be Construed "in Pari Materia" with the 1984 Sentencing Reform Act.**

The expression "supervised release," when included in § 1002 of the Anti-Drug Abuse Act in October 1986, had no known meaning in federal sentencing law, other than as a reference to a novel form of court-imposed and court-controlled supervision created by the Sentencing Reform Act of 1984 and not due to become effective until November 1, 1987, at the earliest. Section 212(a)(2) of the SRA created a new 18 U.S.C. § 3583(d), which sets forth

the conditions a court shall, and in some cases may, impose on a person subject to supervised release. Those conditions are, in several instances, defined or set forth in other sections of the SRA. Section 3583(c) likewise establishes factors, by reference to other provisions of the SRA, which a court must consider when imposing a term of supervised release or in selecting its length. The maximum length of terms of supervised release was set in § 3583(b), with the limit for a Class B felony (such as controlled substance offenses punishable under 21 U.S.C. § 841(b)(1)(A), (B) or (C), as amended in 1986)<sup>26</sup> of no more than three years.<sup>27</sup> As statutes which "share a common purpose" and deliberately use one another's words, the ADAA and SRA must be construed *in pari materia*. *Oscar Mayer & Co. v. Evans*, 441 U.S. 750, 756 (1979); *Kokoszka v. Belford*, 417 U.S. 642, 650 (1974).

The Sentencing Reform Act, already in place but not yet effective when the ADAA was enacted, had provided in §§ 224-225 a mechanism for the repeal of all special parole provisions at the same time that supervised release would become available to federal judges as a sentencing

<sup>26</sup> See 18 U.S.C. § 3559, as created by the SRA and prior to its post-1986 amendments, establishing letter "classes" of offenses for various purposes, defining a Class B felony as any offense with a maximum punishment of at least 20 years. This has since been amended to read 25 years. Pub.L. 100-690, § 7041, 102 Stat. 4399 (Nov. 18, 1988).

<sup>27</sup> The Sentencing Act of 1987 increased the maximum allowable term of supervised release for a Class B felony from three years to five. Act of Dec. 7, 1987, Pub.L. 100-182, § 8(1), 101 Stat. 1267. Under either version it must be noted that there is an inconsistency between § 3583's provision of a maximum of three years (or even five) and § 841(b)(1)(A)'s requirement of a term of "at least five years."



option. These repealer provisions of the SRA were themselves revoked by ADAA § 1005(a,c) prior to their becoming effective. Instead, ADAA § 1004 essentially took their place by providing instead for a conversion to mandatory supervised release in controlled substances cases.

The inclusion of § 1004 in the ADAA in place of the SRA's former sections 224 and 225 served to implement the 1986 Act's establishment (in § 1002, for example) of mandatory terms of supervised release, where only discretionary power would otherwise have existed, but to make the changeover from special parole at the same time that the general power of judges to impose supervised release would arise, that is, November 1, 1987. That, after all, is when the change could be fully implemented; *i.e.*, the date when supervised release could be imposed as well as carried out, modified or revoked. Section 1004(b) explicitly ties the effective date for the changeover – as to whatever penalty sections it covers – to the time when the implementing definitions and standards of 18 U.S.C. § 3583 were to go into effect, along with the U.S. Sentencing Commission guidelines and policy statements to which § 3583 refers.

All of the pertinent sections of the 1984 SRA defining supervised release and controlling the discretion of judges in implementing it became effective on November 1, 1987. Likewise, these same provisions of § 3583 explicitly incorporate by reference the guidelines and policy statements of the U.S. Sentencing Commission, which likewise did not become effective until November 1987 and did not even exist in final form until six months

before that date. See SRA § 235(a)(1)(B); *Mistretta v. United States*, 488 U.S. 361 (1989).

Consistent construction of the ADAA in the context of sentencing reform provides the most fundamental and powerful reason to conclude that all of the ADAA's provisions for mandatory supervised release also went into effect on November 1, 1987. The main point of Congress's establishing a regime of supervised release in place of parole (including special parole), a key aspect of the 1984 sentencing reforms, was to put a final, definite decision about punishment in the hands of the judge at time of sentencing, in the exercise of a strictly guided discretion, and not to leave the matter to later uncertainties. See S.Rep. 98-225, 98th Cong., 1st Sess. 123-25 (1983). Thus, the sentencing court must decide the length of the term, as well as the conditions to be applied, at the time of imposition (although the court may modify the conditions later).

By extensive and detailed cross-references in § 3583(c)&(d) to other provisions of the Sentencing Reform Act and its implementing guidelines, Congress made clear that a critical exercise of guided discretion was to occur at the time of imposing supervised release, something that could not be accomplished before the guidelines' final development. Prior to November 1, 1987, no list of lawful conditions existed, much less criteria governing an exercise of discretion as to the length of the term. The absence of such standards is especially important in considering the imposition of a term of supervised release in a controlled substances case, which is arguably exempt from the maximum terms otherwise established by § 3583(b) by virtue of Congress's use of "at least" language in 21 U.S.C. § 841(b)(1) as amended.



Moreover, under the court of appeals' construction of the ADAA, in a significant number of cases judges would, no doubt, have been called upon to implement and enforce supervised release in all its phases prior to November 1987. Under 21 U.S.C. § 841(b)(1)(C), as revised by § 1002 of the ADAA, mandatory terms of supervised release apply to prison sentences that carry no mandatory minimums, for lesser quantities of drugs. In such cases, many defendants could be expected to be released on supervised release before § 3583 became effective to describe what this kind of supervision even meant. If the supervised release provisions of the ADAA were immediately effective, it thus might easily have become necessary to supervise a releasee, modify the conditions of release, or to revoke supervised release before § 3583 even provided for any such procedures.

For all these reasons, examination of the 1986 Act *in pari materia* with related provisions of other sentencing laws lends further strength to the conclusion that the terms of supervised release mandated by the ADAA do not apply to offenses committed before November 1, 1987.

#### D. The Lower Court's "Error" Theory Contravenes the Rule of Lenity.

The decision below is based, in part, on the assumption that the omission of special parole terms as to "high volume drug offenses" in the 1984 Act was an "error," and that "it is not reasonable to believe that Congress intended to correct a previous error by making the correction effective two years hence." 894 F.2d at 1405; J.A. 50. There is no legislative history of the 1984 Act concerning the revision of § 841(b)(1) that touches on this point. The

history of the 1986 amendments laid out under Point B above suggests that Congress initially was leaning toward restoring special parole in all penalty subsections of 21 U.S.C. § 841(b) as amended by § 1002 of the ADAA, but in the end determined not to do so. Not a word of the 1986 history, however, suggests that Congress was even aware of that precise terms of prior law, much less that it viewed any aspect of its 1984 action as having been in error and that it intended to "correct" it.<sup>28</sup> The presumption, of course, must be the opposite: that Congress intends to do what it did and that it need not state or explain its policy reasons for enacting laws. See *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 179 (1980) ("[T]his Court has never insisted that a legislative body articulate its reasons for enacting a statute.").

Indeed, as revealed in the careful examination of the legislative history by the First Circuit in *United States v. Ferryman*, 897 F.2d 584, 588-90 (1990), and discussed under Point B above, it is at least as likely that the use of the expression "supervised release" in § 1002 of the 1986 amendments was itself the result of careless drafting rather than of thoughtful policy making, as that the elimination of special parole from (b)(1)(A) cases in 1984 was

<sup>28</sup> The first court decision to have noted the absence of any provision for special parole in the 1984 version of § 841(b)(1)(A) and thus to have granted a sentence correction on this basis, *United States v. Phungphiphadhana*, 640 F.Supp. 88 (D.Nev. 1986), was not filed until May 22, 1986, and had only just been published in the Federal Supplement Advance Sheets in the issue dated September 29, 1986. It is thus extremely unlikely that Congress could actually have been seeking to "correct" a known "error" in its October 1986 legislation, which commenced with a bill introduced in the House on September 8.

a "mistake." Yet in either event, the words of Congress must be enforced as written in the criminal statute, barring a far more egregious sort of absurdity than is even arguably present here. As this Court has often stated, it is the province of Congress, rather than of the judiciary, to legislate. "If corrective action is needed, it is the Congress that must provide it. 'It is not for us to speculate, much less act, on whether Congress would have altered its stance had the specific events of this case been anticipated.' " *Busic v. United States*, 446 U.S. 398, 405 (1980), quoting *TVA v. Hill*, 437 U.S. 153, 185 (1978); see also *Busic* at 410, quoting *Hill* at 195. This Court would be rewriting the law if it were to approve the imposition of terms of supervised release for offenses such as petitioner's because of an assumption that Congress erred in abolishing special parole in such cases in 1984.

In any event, it is no more illogical (actually, it is a good deal more logical) to delay the effective date of supervised release for a particular class of cases that has not been subject to any comparable supervision requirement for over two years, until a regime for its implementation and enforcement exists, than it was to omit special parole for all drug conspiracy and attempt cases, as this Court found Congress had done and thus enforced in *Bifulco v. United States*, 447 U.S. 381 (1980). This is especially so because there are several plausible explanations for the abolition of special parole in cases sentenced under 21 U.S.C. § 841(b)(1)(A), as amended by the 1984 Crime Control Act. Congress might have thought that prisoners completing longer sentences would already be subject to longer periods of mandatory release supervision under 18 U.S.C. § 4164 (since prospectively repealed), making special parole redundant; or that such

ex-offenders would be incorrigible, making it pointless; or that after serving longer terms this class of violators would be mellowed with age, or more likely rehabilitated.

Of course, it is immaterial whether any of those proposed rationales commends itself to this Court's sense of a sound drug sentencing policy. "Judicial perception that a particular result would be unreasonable may enter into the construction of ambiguous provisions, but cannot justify disregard of what Congress has plainly and intentionally provided." *Comm'r of Internal Revenue v. Asphalt Products Co.*, 482 U.S. 117, 121 (1987) (per curiam). Congress could make any of the judgments suggested in the preceding paragraph – or any number of others – without any requirement that they be expressed in legislative history, and without courts' being entitled to presume that a criminal sentencing provision must be given the more onerous of two interpretations. Cf. *Busic v. United States*, 446 U.S. 398, 408-09 (1980) (rejecting argument for harsher interpretation based on "assumption that . . . Congress' sole objective was to increase the penalties . . . to the maximum extent possible").

Thus, the underlying premise of the court of appeals' "error-correction" theory for interpreting the 1986 Act is severely flawed. Whatever its reason may have been for doing so, Congress in fact abolished special parole terms effective October 12, 1984, for § 841(b)(1)(A) offenses such as petitioner Gozlon's. The court of appeals therefore went astray when it sought to interpret Congress's actions in 1986 by starting from the premise that Congress's 1984 deletion of special parole terms in cases such as the petitioner's was an "error" to be corrected.



Under *Bifulco v. United States*, *supra*, a court must not assume – as did the court of appeals in this case – that Congress cannot have fully intended the more lenient of two results, even in the context of anti-drug abuse sentencing legislation.<sup>29</sup> It is highly questionable whether the statutes involved here, carefully read as a whole, in light of the policies they foster, and as part of a new sentencing system, are in the final analysis even ambiguous. But if they are, the rule of lenity applies here. The rule of lenity is “an outgrowth of [this Court’s] reluctance to increase or multiply punishments absent a clear and definite legislative directive.” *Busic v. United States*, *supra*, 446 U.S. at 406-07. “The rule is also the product of an awareness that legislators and not the courts should define criminal activity” and allowable punishments. *Huddleston v. United States*, 415 U.S. 814, 831 (1974). See also *United States v. Kozminski*, 487 U.S. 931, 952 (1988).

Where the language of the statute, its legislative history, and the other tools of construction still do not clearly and definitely establish Congress’s intent, the Court must apply the rule of lenity to choose the least harsh of plausible interpretations of a criminal penalty statute’s meaning. “This policy of lenity means that the Court will not interpret a federal criminal statute so as to

<sup>29</sup> It is not because supervised release is inherently a more harsh punishment than special parole that a conclusion of a delayed effective date is more “lenient.” That is at best a debatable point. (See discussion above concerning the many differences between the two.) Rather, construing § 1002 as carrying an immediate effective date is more harsh because in a case such as this petitioner’s that would have fallen within the bounds of the 1984 revision of § 841(b)(1)(A), there can be no special parole in any event.

increase the penalty that it places on an individual when such an interpretation can be based on no more than a guess as to what Congress intended.” *Bifulco*, *supra*, 447 U.S. at 387 (quoting *Ladner v. United States*, 358 U.S. 169, 178 (1958)). See also, e.g., *Hughey v. United States*, 495 U.S. \_\_\_, 109 L.Ed.2d 408, 419 (May 21, 1990); *Tanner v. United States*, 483 U.S. 107, 131-32 (1987); *United States v. Universal C.I.T. Credit Corp.*, 344 U.S. 218, 221-22 (1952). “At the very least,” as the Chief Justice has written, where “the issue is subject to some doubt,” the Court will “adhere to the familiar rule that, ‘where there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant.’” *Adamo Wrecking Co. v. United States*, 434 U.S. 275, 284-85 (1978) (quoting *United States v. Bass*, 404 U.S. 336, 348 (1971)).

In *McNally v. United States*, 483 U.S. 350, 359-60 (1987), this Court stated that “when there are two rational readings of a criminal statute, one harsher than the other, we are to choose the harsher only when Congress has spoken in clear and definite language.” The language of the ADAA is neither clear nor definite. As the Court added, “if Congress desires to go further, it must speak more clearly than it has.” *Id.* at 360. The same clarity by Congress should be required in the present case.

In this case, for the reasons discussed above, it is not apparent that the argument for an immediate effective date is even “rational.” *McNally*, *supra*, 483 U.S. at 359. Operation of the rule of lenity here provides the final confirmation that supervised release did not come into effect for crimes committed prior to November 1, 1987.

## CONCLUSION

For all of these reasons, terms of supervised release may not be imposed as part of the sentence in this case, because the law creating that penalty was not yet effective at the time of commission of the offenses. The judgment of the United States Court of Appeals for the Third Circuit should be affirmed insofar as it vacated the special parole terms imposed on resentencing by the district court, but reversed to the extent that it remanded for imposition of terms of supervised release.

Respectfully submitted,

PETER GOLDBERGER  
PAMELA A. WILK  
*Attorneys for Petitioner*

August 2, 1990.

## INDEX TO APPENDIX OF STATUTES

|  | Page    |
|--|---------|
| COMPREHENSIVE CRIME CONTROL ACT OF 1984.....         | App. 1  |
| Sentencing Reform.....                               | App. 1  |
| § 212.....   | App. 1  |
| § 215.....   | App. 9  |
| § 224.....   | App. 11 |
| § 225.....   | App. 12 |
| § 234.....   | App. 13 |
| Controlled Substances Penalties Amendments Act ..... | App. 14 |
| § 502.....   | App. 14 |
| § 503.....   | App. 17 |
| § 504.....   | App. 18 |
| § 505.....   | App. 20 |
| SENTENCING REFORM AMENDMENTS ACT OF 1985 .....       | App. 20 |
| ANTI-DRUG ABUSE ACT OF 1986.....                     | App. 21 |
| Narcotics Penalties and Enforcement Act.....         | App. 21 |
| § 1002.....  | App. 22 |
| § 1003.....  | App. 28 |
| § 1004.....  | App. 30 |
| § 1005.....  | App. 31 |
| § 1006.....  | App. 31 |
| § 1007.....  | App. 33 |



## INDEX TO APPENDIX OF STATUTES - Continued

|  | Page    |
|--|---------|
| § 1008.....  | App. 34 |
| § 1009.....  | App. 34 |
| Juvenile Drug Trafficking Act.....   | App. 35 |
| § 1102.....  | App. 35 |
| § 1103.....  | App. 37 |
| § 1104.....  | App. 37 |
| § 1105.....  | App. 38 |
| Controlled Substances Import and Export Act<br>Penalties Enhancement Act ..... | App. 39 |
| § 1302.....  | App. 39 |
| Minor Technical Amendments.....  | App. 46 |
| § 1866.....  | App. 46 |
| CRIMINAL LAW AND PROCEDURE TECHNICAL<br>AMENDMENTS ACT OF 1986 .....           | App. 47 |
| § 14.....  | App. 48 |
| § 17.....  | App. 48 |
| § 28.....  | App. 49 |
| SENTENCING ACT OF 1987.....  | App. 49 |
| § 2.....   | App. 50 |
| § 22.....  | App. 50 |
| § 24.....  | App. 51 |
| § 25.....  | App. 51 |
| § 26.....  | App. 52 |

## INDEX TO APPENDIX OF STATUTES - Continued

|   | Page    |
|---|---------|
| TITLE 21 UNITED STATES CODE - FOOD AND<br>DRUG..... | App. 52 |
| § 21 U.S.C. § 841 (1982) .....                      | App. 52 |
| § 960 (1982) .....                                  | App. 57 |
| § 841 (Supp. III 1985).....                         | App. 59 |
| § 960 (Supp. III 1985).....                         | App. 64 |
| §§ 845, 845a (Supp. IV 1986)...                     | App. 66 |
| § 841 (Supp. V 1987) .....                          | App. 69 |
| § 960 (Supp. V 1987) .....                          | App. 79 |

**COMPREHENSIVE CRIME CONTROL ACT OF 1984**  
**PUBLIC LAW 98-473**  
**98 STAT. 1987**  
**OCT. 12, 1984**

**CHAPTER II - SENTENCING REFORM**

SEC. 211. This chapter may be cited as the "Sentencing Reform Act of 1984".

SEC. 212. (a) Title 18 of the United States Code is amended by -

(1) redesignating sections 3577, 3578, 3579, 3580, 3611, 3612, 3615, 3617, 3618, 3619, 3620, and 3656 as sections 3661, 3662, 3663, 3664, 3665, 3666, 3667, 3668, 3669, 3670, 3671, and 3672 of a new chapter 232 of title 18 of the United States Code, respectively;

(2) repealing chapters 227, 229, and 231 and substituting the following new chapters:

**CHAPTER 227 - SENTENCES**

**"Subchapter**

|                              |      |
|------------------------------|------|
| "A. General Provisions ..... | 3551 |
| "B. Probation .....          | 3561 |
| "C. Fines .....              | 3571 |
| "D. Imprisonment .....       | 3581 |

**"SUBCHAPTER A - GENERAL PROVISIONS**

**"Sec.**

- "3551. Authorized sentences.
- "3552. Presentence reports.
- "3553. Imposition of a sentence
- "3554. Order of criminal forfeiture.



App. 2

- "3555. Order of notice to victims.
- "3556. Order of restitution.
- "3557. Review of a sentence
- "3558. Implementation of a sentence.
- "3559. Sentencing classification of offenses.

"SUBCHAPTER A - GENERAL PROVISIONS

"§ 3551. Authorized sentences

"(a) IN GENERAL. - Except as otherwise specifically provided, a defendant who has been found guilty of an offense described in any Federal statute, other than an Act of Congress applicable exclusively in the District of Columbia or the Uniform Code of Military Justice, shall be sentenced in accordance with the provisions of this chapter so as to achieve the purposes set forth in subparagraphs (A) through (D) of section 3553(a)(2) to the extent that they are applicable in light of all the circumstances of the case.

"(b) INDIVIDUALS. - An individual found guilty of an offense shall be sentenced, in accordance with the provisions of section 3553, to -

"(1) a term of probation as authorized by subchapter B;

"(2) a fine as authorized by subchapter C; or

"(3) a term of imprisonment as authorized by subchapter D.

A sentence to pay a fine may be imposed in addition to any other sentence. A sanction authorized by section 3354, 3555, or 3556 may be imposed in addition to the sentence required by this subsection.

App. 3

"(c) ORGANIZATIONS. - An organization found guilty of an offense shall be sentenced, in accordance with the provisions of section 3553, to -

"(1) a term of probation as authorized by subchapter B; or

"(2) a fine as authorized by subchapter C.

A sentence to pay a fine may be imposed in addition to a sentence to probation. A sanction authorized by section 3554, 3555, or 3556 may be imposed in addition to the sentence required by this subsection.

\* \* \*

§ 3553. Imposition of a sentence

"(a) FACTORS TO BE CONSIDERED IN IMPOSING A SENTENCE. - The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider -

"(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

"(2) the need for the sentence imposed -

"(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

"(B) to afford adequate deterrence to criminal conduct;

"(C) to protect the public from further crimes of the defendant; and

"(D) to provide the defendant with needed educational or vocational training,

App. 4

medical care, or other correctional treatment in the most effective manner;

"(3) the kinds of sentences available;

"(4) the kinds of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines that are issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1) and that are in effect on the date the defendant is sentenced;

"(5) any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2) that is in effect on the date the defendant is sentenced; and

"(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

"(b) APPLICATION OF GUIDELINES IN IMPOSING A SENTENCE. - The court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that an aggravating or mitigating circumstance exists that was not adequately taken into consideration by the Sentencing Commission in formulating the guidelines and that should result in a sentence different from that described.

"(c) STATEMENT OF REASONS FOR IMPOSING A SENTENCE. - The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence -

"(1) is of the kind, and within the range, described in subsection (a)(4), the reason for imposing a sentence at a particular point within the range; or

App. 5

"(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described.

If the sentence does not include an order of restitution, the court shall include in the statement the reason therefor. The clerk of the court shall provide a transcription of the court's statement of reasons to the Probation System, and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

"(d) PRESENTENCE PROCEDURE FOR AN ORDER OF NOTICE OR RESTITUTION. - Prior to imposing an order of notice pursuant to section 3555, or an order of restitution pursuant to section 3556, the court shall give notice to the defendant and the Government that it is considering imposing such an order. Upon motion of the defendant or the Government, or on its own motion, the court shall -

"(1) permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order.

"(2) afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and

"(3) include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

Upon motion of the defendant or the Government, or on its own motion, the court may in its discretion employ any additional procedures that it concludes will not unduly complicate or prolong the sentencing process.



\* \* \*

**"§ 3559. Sentencing classification of offenses**

"(a) **CLASSIFICATION.** – An offense that is not specifically classified by a letter grade in the section defining it, is classified –

"(1) if the maximum term of imprisonment authorized is –

"(A) life imprisonment, or if the maximum penalty is death, as a Class A felony;

"(B) twenty years or more, as a Class B felony;

"(C) less than twenty years but ten or more years, as a Class C felony;

"(D) less than ten years but five or more years, as a Class D felony;

"(E) less than five years but more than one year, as a Class E felony;

"(F) one year or less but more than six months, as a Class A misdemeanor;

"(G) six months or less but more than thirty days, as a Class B misdemeanor;

"(H) thirty days or less but more than five days, as a Class C misdemeanor; or

"(I) five days or less, or if no imprisonment is authorized, as an infraction.

"(b) **EFFECT OF CLASSIFICATION.** – An offense classified under subsection (a) carries all the incidents assigned to the applicable letter designation except that:

"(1) the maximum fine that may be imposed is the fine authorized by the statute

describing the offense, or by this chapter, whichever is the greater; and

"(2) the maximum term of imprisonment is the term authorized by the statute describing the offense.

\* \* \*

**"SUBCHAPTER D – IMPRISONMENT**

"Sec.

"3581. Sentence of imprisonment.

"3582. Imposition of a sentence of imprisonment.

"3583. Inclusion of a term of supervised release after imprisonment.

"3584. Multiple sentences of imprisonment.

"3585. Calculation of a term of imprisonment.

"3586. Implementation of a sentence of imprisonment.

**"SUBCHAPTER D – IMPRISONMENT**

\* \* \*

**§ "3583. Inclusion of a term of supervised release after imprisonment**

"(a) **IN GENERAL.** – The court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment.

"(b) **AUTHORIZED TERMS OF SUPERVISED RELEASE.** – The authorized terms of supervised release are –

"(1) for a Class A or Class B felony, not more than three years;

"(2) for a Class C or Class D felony, not more than two years; and

"(3) for a Class E felony, or for a misdemeanor, not more than one year.

"(c) **FACTORS TO BE CONSIDERED IN INCLUDING A TERM OF SUPERVISED RELEASE.** – The court, in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release, shall consider the factors set forth in section 3553 (a)(1), (a)(2)(B), (a)(2)(D), (a)(4), (a)(5), and (a)(6).

"(d) **CONDITIONS OF SUPERVISED RELEASE.** – The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision. The court may order, as a further condition of supervised release, to the extent that such condition –

"(1) is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), and (a)(2)(D);

"(2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B) and (a)(2)(D); and

"(3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a); any condition set forth as a discretionary condition of probation in section 3563(b)(1) through (b)(10) and (b)(12) through (b)(19), and any other condition it considers to be appropriate. If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he be deported and remain outside the United States, and may order that he be delivered to a duly authorized immigration official for such deportation.

"(e) **MODIFICATION OF TERM OR CONDITIONS.** – The court may, after considering the factors set forth in section 3553 (a)(1), (a)(2)(B), (a)(2)(D), (a)(4), (a)(5), and (a)(6) –

"(1) terminate a term of supervised release previously ordered and discharge the person released at any time after the expiration of one year of supervised release, if it is satisfied that such action is warranted by the conduct of the person released and the interest of justice;

"(2) after a hearing, extend a term of supervised release if less than the maximum authorized term was previously imposed, and may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, pursuant to the provisions applicable to the initial setting of the terms and conditions of post-release supervision; or

"(3) treat a violation of a condition of a term of supervised release as contempt of court pursuant to section 401(3) of this title.

"(f) **WRITTEN STATEMENT OF CONDITIONS.** – The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

\* \* \*

SEC. 215. The Federal Rules of Criminal Procedure are amended as follows:

(a) Rule 32 is amended –

\* \* \*



(b) Rule 35 is amended to read as follows:

**"Rule 35. Correction of Sentence**

"(a) CORRECTION OF A SENTENCE ON REMAND. - The court shall correct a sentence that is determined on appeal under 18 U.S.C. 3742 to have been imposed in violation of law, to have been imposed as a result of an incorrect application of the sentencing guidelines, or to be unreasonable, upon remand of the case to the court -

"(1) for imposition of a sentence in accord with the findings of the court of appeals; or

"(2) for further sentencing proceedings if, after such proceedings, the court determines that the original sentence was incorrect.

"(b) CORRECTION OF SENTENCE FOR CHANGED CIRCUMSTANCES. - The court, on motion of the Government, may within one year after the imposition of a sentence, lower a sentence to reflect a defendant's subsequent, substantial assistance in the investigation or prosecution of another person who has committed an offense, to the extent that such assistance is a factor in applicable guidelines or policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)."

(c) Rule 38 is amended -

\* \* \*

(d) Rule 40 is amended

\* \* \*

(e) Rule 54 is amended

\* \* \*

(f) Rule 6(e)(3)(C) is amended

\* \* \*

(g) The Table of Rules that precedes Rule 1 is amended as follows:

(1) The item relating to Rule 35 is amended to read as follows:

"35. Correction of Sentence.

"(a) Correction of a sentence on remand.

"(b) Correction of a sentence for changed circumstances."

(2) The item relating to Rule 38 is amended to read as follows:

"38. Stay of Execution.

"(a) Death.

"(b) Imprisonment.

"(c) Fine.

"(d) Probation.

"(e) Criminal forfeiture, notice to victims, and restitution.

"(f) Disabilities."

\* \* \*

SEC. 224. The Controlled Substances Act (21 U.S.C. 801 et seq.) is amended as follows:

(a) Section 401 (21 U.S.C. 841) is amended -

(1) in subsection (b)(1)(A), by deleting the last sentence;

(2) in subsection (b)(1)(B), by deleting the last sentence;

App. 12

(3) in subsection (b)(2), by deleting the last sentence;

(4) in subsection (b)(4), by deleting "subsections (a) and (b) of" and by adding "and section 3607 of title 18, United States Code" after "404";

(5) in subsection (b)(5), by deleting the last sentence; and

(6) by repealing subsection (c).

(b) Section 405 (21 U.S.C. 845) is amended—

(1) in subsection (a), by deleting "(1)" the second place it appears, and by deleting ", and (2) at least twice any special parole term authorized by section 401(b), for a first offense involving the same controlled substance and schedule"; and

(2) in subsection (b), by deleting "(1)" the second place it appears, and by deleting ", and (2) at least three times any special parole term authorized by section 401(b), for a second or subsequent offense involving the same controlled substance and schedule".

(c) Section 408(c) (21 U.S.C. 848(c)) is amended by deleting "and section 4202 of title 18 of the United States Code".

SEC. 225. The Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.) is amended as follows:

(a) Section 1010 (21 U.S.C. 960) is amended—

(1) in subsection (b)(1), by deleting the last sentence;

(2) in subsection (b)(2), by deleting the last sentence; and

App. 13

(3) by repealing subsection (c).

(b) Section 1012(a) (21 U.S.C. 962(a)) is amended by deleting the last sentence.

\* \* \*

EFFECTIVE DATE

SEC. 235. (a)(1) This chapter shall take effect on the first day of the first calendar month beginning twenty-four months after the date of enactment, except that—

(A) the repeal of chapter 402 of title 18, United States Code, shall take effect on the date of enactment;

(B)(i) chapter 58 of title 28, United States Code, shall take effect on the date of enactment of this Act or October 1, 1983, whichever occurs later, and the United States Sentencing Commission shall submit the initial sentencing guidelines promulgated to section 994(a)(1) of title 28 to the Congress within eighteen months of the effective date of the chapter; and

(ii) the sentencing guidelines promulgated pursuant to section 994(a)(1), and the provisions of sections 3581, 3583, and 3624 of title 18, United States Code, shall not go into effect until the day after—

(I) the United States Sentencing Commission has submitted the initial set of sentencing guidelines to the Congress pursuant to subparagraph (B)(i), along with a report stating the reasons for the Commission's recommendations;

(II) the General Accounting Office has undertaken a study of the guidelines, and their potential impact in comparison with the operation of the existing sentencing and



parole release system, and has, within one hundred and fifty days of submission of the guidelines, reported to the Congress the results of its study; and

(III) the Congress has had six months after the date described in subclause (I) in which to examine the guidelines and consider the reports; and

(IV) the provisions of sections 227 and 228 shall take effect on the date of enactment.

\* \* \*

## CHAPTER V - DRUG ENFORCEMENT AMENDMENTS

### PART A - CONTROLLED SUBSTANCES PENALTIES

SEC. 501. This chapter may be cited as the "Controlled Substances Penalties Amendments Act of 1984".

SEC. 502. Subsection (b) of section 401 of the Controlled Substances Act (21 U.S.C. 841(b)) is amended-

(1) in paragraph (1), by-

(A) redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively, and inserting after "(1)" a new subparagraph to read as follows:

"(A) In the case of a violation of subsection (a) of this section involving-

"(i) 100 grams or more of a controlled substance in schedule I or II which is a mixture or substance containing a detectable amount of a narcotic drug other than a narcotic drug consisting of-

"(I) coca leaves;

"(II) a compound, manufacture, salt, derivative, or preparation of coca leaves; or

"(III) a substance chemically identical thereto;

"(ii) a kilogram or more of any other controlled substance in schedule I or II which is a narcotic drug;

"(iii) 500 grams or more of phencyclidine (PCP); or

"(iv) 5 grams or more of lysergic acid diethylamide (LSD); such person shall be sentenced to a term of imprisonment of not more than 20 years, a fine of not more than \$250,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 40 years, a fine of not more than \$500,000, or both";

(B) in subparagraph (B), as redesignated above, by-

(i) striking out "which is a narcotic drug" in the first sentence and inserting in lieu thereof "except as provided in subparagraphs (A) and (C).";

(ii) striking out "\$25,000" and "\$50,000" and inserting in lieu thereof "\$125,000" and "\$250,000", respectively; and

(iii) striking out "of the United States" in the second sentence and inserting in lieu thereof "of a State, the United States, or a foreign county"; and

(C) in subparagraph (C), as redesignated above, by-

(i) Striking out "a controlled substance in schedule I or II which is not a narcotic drug" and ", (5), and (6)" and inserting in lieu thereof "less than 50 kilograms of marihuana, 10 kilograms of hashish, or one kilogram of hashish oil" and "and (5)", respectively;

(ii) striking out "\$15,000" and "\$30,000" and inserting in lieu thereof "\$50,000" and "\$100,000", respectively; and

(iii) striking out "of the United States" in the second sentence and inserting in lieu thereof "of a State, the United States, or a foreign country";

(2) in paragraph (2), by-

(A) striking out "\$10,000" and "\$20,000" and inserting in lieu thereof "\$25,000" and "\$50,000", respectively; and

(B) striking out "of the United States" and inserting in lieu thereof "of a State, the United States, or a foreign country";

(3) in paragraph (3), by-

(A) striking out "\$5,000" and "\$10,000" and inserting in lieu thereof "\$10,000" and "\$20,000", respectively; and

(B) striking out "of the United States" and inserting in lieu thereof "of a State, the United States, or a foreign country";

(4) in paragraph (4), by striking out "(1)(B)" and inserting in lieu thereof "(1)(C)";

(5) by striking out paragraphs (5) and (6);

(6) by adding at the end thereof the following:

"(5) Notwithstanding paragraph (1), any person who violates subsection (a) by cultivating a controlled substance on Federal property shall be fined not more than-

"(A) \$500,000 if such person is an individual; and

"(B) \$1,000,000 if such person is not an individual."

SEC. 503. (a) Part D of the Controlled Substances Act is amended by adding after section 405 of the following new section:

#### "DISTRIBUTION IN OR NEAR SCHOOLS

"SEC. 405A. (a) Any person who violates section 401(a)(1) by distributing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary or secondary school is (except as provided in subsection (b)) punishable (1) by a term of imprisonment, or fine, or both up to twice that authorized by section 841(b) of this title; and (2) at least twice any special parole term authorized by section 401(b) for a first offense involving the same controlled substance and schedule.

"(b) Any person who violates section 401(a)(1) by distributing a controlled substance in or on, or within one



thousand feet of, the real property comprising a public or private elementary or secondary school after a prior conviction or convictions under subsection (a) have become final is punishable (1) by a term of imprisonment of not less than three years and not more than life imprisonment and (2) at least three times any special [sic] term authorized by section 401(b) for a second or subsequent offense involving the same controlled substance and schedule.

"(c) In the case of any sentence imposed under subsection (b), imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under subsection (b) shall not be eligible for parole under section 4202 of title 18 of the United States Code until the individual has served the minimum sentence required by such subsection."

(b)(1) Section 401(b) of such Act (21 U.S.C. 841(b)) is amended by inserting "or 405A" after "405".

(2) Section 401(c) of such Act is amended by inserting "405A" after "405" each place it occurs.

(3) Section 405 of such Act (21 U.S.C. 845) is amended by striking out "Any" in subsections (a) and (b) and inserting in lieu thereof "Except as provided in section 405A, any".

SEC. 504. Subsection (b) of section 1010 of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

(1) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively, and inserting after "(b)" a new paragraph to read as follows:

"(1) In the case of a violation under subsection (a) of this section involving—

"(A) 100 grams or more of a mixture or substance containing a detectable amount of a narcotic drug in schedule I or II other than a narcotic drug consisting of—

"(i) coca leaves;

"(ii) a compound, manufacture, salt, derivative, or preparation of coca leaves; or

"(iii) a substance chemically identical thereto;

"(B) a kilogram or more of any other narcotic drug in schedule I or II;

"(C) 500 grams or more of phencyclidine (PCP);

"(D) 5 grams or more of lysergic acid diethylamide (LSD); the person committing such violation shall be imprisoned for not more than twenty years, or fined not more than \$250,000, or both."

(2) in paragraph (2), as redesignated above, by—

(A) striking out "narcotic drug in schedule I or II, the person committing such violation shall" and inserting in lieu thereof "controlled substance in schedule I or II, the person committing such violation shall, except as provided in paragraphs (1) and (3)," and

(B) striking out "\$25,000" and inserting in lieu thereof "\$125,000";

(3) in paragraph (3), as redesignated above, by—

(A) striking out "a controlled substance other than a narcotic drug in schedule I or II, the person committing such violation shall" and inserting in lieu thereof "less than 50 kilograms of marihuana, less than 10 kilograms of hashish, less than one kilogram of hashish oil, or any quantity of a controlled substance in schedule III, IV, or V, the person committing such violation shall, except as provided in paragraph (4)"; and

(B) striking out "\$15,000" and substituting "\$50,000".

SEC. 505. Section 1012 of the Controlled Substances Import and Export Act (21 U.S.C. 962) is amended by striking out "the United States" in subsection (b) and inserting in lieu thereof "a State, the United States, or a foreign country".

**SENTENCING REFORM AMENDMENTS ACT OF 1985**  
**PUBLIC LAW 99-217**  
**99 STAT. 1729**  
**DECEMBER 26, 1985**

An Act to extend the deadline for the submission of the initial set of sentencing guidelines by the United States Sentencing Commission, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Sentencing Reform Amendments Act of 1985".

**SEC. 2. DEADLINE FOR INITIAL SET OF SENTENCING GUIDELINES.**

(a) **EXTENSION.** - Section 235(a)(1)(B)(i) of the Comprehensive Crime Control Act of 1984 is amended by striking out "eighteen" and inserting "30" in lieu thereof.

(b) **TECHNICAL AMENDMENT.** - Section 235(a)(1)(B)(i) of the Comprehensive Crime Control Act of 1984 is amended by striking out "to section" and inserting "under section" in lieu thereof.

**SEC. 3. CONFORMING CHANGE IN TITLE 28, UNITED STATES CODE.**

Section 994(a) of title 28, United States Code, is amended by striking out "within three years" and all that follows through "Act of 1983" and inserting in lieu thereof "not later than one year after the initial set of sentencing guidelines promulgated under subsection (a) goes into effect".

**SEC. 4. CONFORMING CHANGE IN COMPREHENSIVE CRIME CONTROL ACT OF 1984.**

Section 235(a)(1) of the Comprehensive Crime Control Act of 1984 is amended by striking out "twenty-four" and inserting "36" in lieu thereof.

Approved December 26, 1985.

**ANTI-DRUG ABUSE ACT OF 1986**  
**P.L. 99-570**  
**100 STAT. 3207-2**  
**OCT. 27, 1986**

**TITLE I - ANTI-DRUG ENFORCEMENT**

**Subtitle A - Narcotics Penalties and Enforcement Act of 1986**



SEC. 1001. SHORT TITLE.

This subtitle may be cited as the "Narcotics Penalties and Enforcement Act of 1986".

SEC. 1002. CONTROLLED SUBSTANCES ACT PENALTIES.

Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 84(b)(1)) is amended -

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by striking out subparagraphs (A) and (B) and inserting the following in lieu thereof:

"(1)(A) In the case of violation of subsection (a) of this section involving -

"(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

"(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of -

"(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(IV) any compound, mixture, or preparation which contains any quantity of any of the substance referred to in subclauses (I) through (III)";

"(iii) 50 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

"(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

"(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$4,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death

or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$8,000,000 if the defendant is an individual or \$20,000,000 if the defendant is other than an individual, or both. Any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

"(B) In the case of a violation of subsection (a) of this section involving -

"(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

"(ii) 500 grams or more of a mixture or substance containing a detectable amount of -

"(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(IV) any compound, mixture, or preparation which contains any quantity of any of the substance referred to in sub-clauses (I) through (III)";

"(iii) 5 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

"(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide; or

"(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$2,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under



any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$4,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

"(C) In the case of a controlled substance in schedule I or II except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with

the provisions of title 18, United States Code, or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title III or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$2,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence."

SEC. 1003. OTHER AMENDMENTS TO THE CONTROLLED SUBSTANCES ACT.

(a) Section 401 of the Controlled Substances Act (21 U.S.C. 841) is further amended as follows:

(1) In subsection (b), paragraph (1)(D), as redesignated, is amended by --

(A) striking out "a fine of not more than \$50,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual";

(B) striking out "a fine of not more than \$100,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual"; and

(C) inserting "except in the case of 100 or more marihuana plants regardless of weight," after "marihuana," the first place it appears.

(2) In subsection (b), paragraph (2) is amended by striking out "a fine of not more than \$25,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$250,000 if the defendant is an individual, or \$1,000,000 if the defendant is other than an individual", and by striking out "a fine of not more than \$50,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the

provisions of title 18, United States Code, or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual".

(3) In subsection (b), paragraph (3) is amended by striking out "a fine of not more than \$10,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$100,000 if the defendant is an individual or \$250,000 if the defendant is other than an individual", and by striking out "a fine of not more than \$20,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$200,000 if the defendant is an individual or \$500,000 if the defendant is other than an individual".

(4) In subsection (b), paragraph (4) is amended by striking out "1(C)" and inserting "1(D)" in lieu thereof.

(5) In subsection (b), paragraph (5) is amended to read as follows:

"(5) Any person who violates subsection (a) of this section by cultivating a controlled substances on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed --

"(A) the amount authorized in accordance with this section;

"(B) the amount authorized in accordance with the provisions of title 18, United States Code;

"(C) \$500,000 if the defendant is an individual; or



"(D) \$1,000,000 if the defendant is other than an individual; or both."

(6) Subsection (d) is amended by striking out "a fine of not more than \$15,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual".

(b) Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended -

(1) by inserting the following new paragraph after paragraph (24):

"(25) The term 'serious bodily injury' means bodily injury which involves -

"(A) a substantial risk of death;

"(B) protracted and obvious disfigurement; or

"(C) protracted loss or impairment of the functions of a bodily member, organ, or mental faculty."; and

(2) by renumbering the following paragraphs accordingly.

#### SEC. 1004. ELIMINATION OF SPECIAL PAROLE TERMS.

(a) The Controlled Substances Act and the Controlled Substances Import and Export Act are amended by striking out "special parole term" each place it appears and inserting "term of supervised release" in lieu thereof.

(b) The amendments made by this section shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

#### SEC. 1005. AMENDMENT TO THE COMPREHENSIVE CRIME CONTROL ACT OF 1984.

(a) Subsection (a) of section 224 of the Comprehensive Crime Control Act of 1984 is amended -

(1) by inserting "and" after the semicolon in paragraph (4); and

(2) by striking out paragraphs (1), (2), (3), and (5) and redesignating the other paragraphs accordingly.

(b) Section 224 of the Comprehensive Crime Control Act of 1984 is amended -

(1) by striking out subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

(c) Section 225 of the Comprehensive Crime Control Act of 1984 is amended to read as follows:

"SEC. 225. Section 1515 of the Controlled Substances Import and Export Act (21 U.S.C. 960) is amended by repealing subsection (c)."

#### SEC. 1006. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a)(1) Subsection (a) of section 3583 of title 18, United States Code, is amended by inserting, "except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute" after "imprisonment" the second place it appears.

(2) Subsection (b) of section 3583 of title 18, United States Code, is amended by striking out "The" and inserting in lieu thereof "Except as otherwise provided, the".

(3) Subsection (e) of section 3583 of title 18, United States Code, is amended -

(A) so that the catchline reads as follows: "Modification of conditions or revocation.";

(B) in paragraph (2) by striking out "or" after the semicolon;

(C) in paragraph (3) by striking out "title." and inserting "title; or" in lieu thereof; and

(D) by inserting the following new paragraph after paragraph (3):

"(4) revoke a term of supervised release, and require the person to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision, if it finds by a preponderance of the evidence that the person violated a condition of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure that are applicable to probation revocation and to the provisions of applicable policy statements issued by the Sentencing Commission."

(4) The amendments made by this subsection shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

(b) Paragraph (3) of section 994(a) of title 28, United States Code, is amended by inserting "and revocation of supervised release" after "supervised release".

(c) Section 511 of title II of the Comprehensive Drug Abuse Prevention Act of 1978 (21 U.S.C. 881) is amended -

(1) in subsection (f) by inserting "or II" after "I" each place it appears;

(2) by redesignating subsection (f) as subsection (f)(1); and

(3) by inserting the following new paragraph after subsection (f)(1) as so redesignated:

"(2) The Attorney General may direct the destruction of all controlled substances in schedule I or II seized for violation of this title under such circumstances as the Attorney General may deem necessary."

SEC. 1007. AMENDMENT TO TITLE 18 OF THE UNITED STATES CODE.

(a) Section 3553 of title 18, United States Code, is amended by adding the following at the end thereof:

"(e) LIMITED AUTHORITY TO IMPOSE A SENTENCE BELOW A STATUTORY MINIMUM. - Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code."

(b) The amendment made by this section shall take effect on the date of the taking effect of section 3553 of title 18, United States Code.



SEC. 1008. AMENDMENT TO TITLE 28 OF THE UNITED STATES CODE.

Section 994 of title 28 of the United States Code is amended by -

(1) inserting the following after subsection (m):

"(n) The Commission shall assure that the guidelines reflect the general appropriateness of imposing a lower sentence than would otherwise be imposed, including a sentence that is lower than that established by statute as minimum sentence to take into account a defendant substantial assistance in the investigation or prosecution of another person who has committed an offense."; and

(2) redesignating subsections (n), (o), (p), (q), (r), (s), (t), (u), (v), and (w) as subsections (o), (p), (q), (r), (s), (t), (u), (v), (w), and (x), respectively.

SEC. 1009. AMENDMENT TO THE FEDERAL RULES OF CRIMINAL PROCEDURE.

(a) Rule 35(b) of the Federal Rules of Criminal Procedure is amended by striking out "to the extent" and all that follows through the end and inserting in lieu thereof the following: "in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code. The court's authority to lower a sentence under this subdivision includes the authority to lower such sentence to a level below that established by statute as a minimum sentence.

(b) The amendment made by this section shall take effect on the date of the taking effect of rule 35(b) of the

Federal Rules of Criminal Procedure, as amended by section 215(b) of the Comprehensive Crime Control Act of 1984.

\* \* \*

Subtitle C - Juvenile Drug Trafficking Act of 1986

SEC. 1101. SHORT TITLE.

This subtitle may be cited as the "Juvenile Drug Trafficking Act of 1986".

SEC. 1102. OFFENSE.

Part D of the Controlled Substances Act is amended by adding after section 405A a new section as follows:

"EMPLOYMENT OR USE OF PERSONS UNDER 18 YEARS OF AGE IN DRUG OPERATIONS

"SEC. 405B. (a) It shall be unlawful for any person at least eighteen years of age to knowingly and intentionally -

"(1) employ, hire, use, persuade, induce, entice, or coerce, a person under eighteen years of age to violate any provision of this title or title III; or

"(2) employ, hire, use, persuade, induce, entice, or coerce, a person under eighteen years of age to assist in avoiding detection or apprehension for any offense of this title or title III by any Federal, State, or local law enforcement official.

"(b) Any person who violates subsection (a) is punishable by a term of imprisonment up to twice that otherwise authorized or up to twice the fine otherwise authorized, or both, and at least twice any term of supervised release otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year.

"(c) Any person who violates subsection (a) after a prior conviction or convictions under subsection (a) of this section have become final, is punishable by a term of imprisonment up to three times that otherwise authorized, or up to three times the fine otherwise authorized, or both, and at least three times any term of supervised release otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year.

"(d) Any person who violates section 405B(a)(1) or (2)

"(1) by knowingly providing or distributing a controlled substance or a controlled substance analogue to any person under eighteen years of age; or

"(2) if the person employed, hired, or used is fourteen years of age or younger,

shall be subject to a term of imprisonment for not more than five years or a fine of not more than \$50,000, or both, in addition to any other punishment authorized by this section.

"(e) In any case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section of an offense for which a mandatory minimum term of imprisonment is applicable shall not be eligible for parole under section 4202 of title 18, United States Code, until the individual has served the mandatory term of imprisonment required by section 401(b) as enhanced by this section.

"(f) Except as authorized by this title, it shall be unlawful for any person to knowingly or intentionally provide or distribute any controlled substance to a pregnant individual in violation of any provision of this title. Any person who violates this subsection shall be subject to the provisions of subsections (b), (c), and (e)."

#### SEC. 1103. TECHNICAL AMENDMENTS.

(a) Section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b)) is amended by striking out "or 405A" and inserting in lieu thereof, "405A, or 405B".

(b) Section 401(c) of the Controlled Substances Act (21 U.S.C. 841(c)) is amended by striking out "405A" each place it appears and inserting in lieu thereof, "405A, or 405B".

#### SEC. 1104. MANUFACTURING A CONTROLLED SUBSTANCE WITHIN 1,000 FEET OF A COLLEGE.

(a) Section 405A of the Controlled Substances Act (21 U.S.C. 845a) is amended by inserting "or manufacturing" after "distributing" wherever it appears and by striking out "a public or private elementary or secondary school" wherever it appears and inserting in lieu thereof



"a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university".

(b) Section 405A(a) of the Controlled Substances Act (21 U.S.C. 845a(a)) is amended by striking out "involving the same controlled substance and schedule".

(c) Section 405A(b) of the Controlled Substances Act (21 U.S.C. 845a(b)) is amended by striking out "(1) by" and all that follows through the end and inserting the following in lieu thereof:

"(1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) a term of imprisonment of up to three times that authorized by section 401(b) of this title for a first offense, or a fine up to three times that authorized by section 401(b) of this title for a first offense, or both, and (2) at least three times any term of supervised release authorized by section 401(b) of this title for a first offense."

#### SEC. 1105. IMPRISONMENTS.

(a) Section 405(a) of the Controlled Substances Act (21 U.S.C. 845(a)) is amended by adding the following at the end thereof: "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year".

(b) Section 405(b) of the Controlled Substances Act (21 U.S.C. 845(b)) is amended by adding the following at the end thereof: "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less

than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana."

(c) Section 405A(a) of the Controlled Substances Act (21 U.S.C. 845a(a)) is amended by adding the following at the end thereof: "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana."

\* \* \*

### Subtitle G - Controlled Substances Import and Export Act Penalties Enhancement Act of 1986

#### SEC. 1301. SHORT TITLE.

This subtitle may be cited as the "Controlled Substances Import and Export Penalties Enhancement Act of 1986."

#### SEC. 1302. ENHANCED PENALTIES.

(a) Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended -

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by striking out paragraphs (1) and (2) and inserting the following in lieu thereof:

"(1) In the case of a violation of subsection (a) of this section involving -

"(A) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

"(B) 5 kilograms or more of a mixture or substance containing a detectable amount of -

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

"(C) 50 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

"(D) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(E) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(F) 400 grams or more of a mixture of substances containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture

or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

"(G) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

the person committing such violation shall be sentenced to a term of imprisonment of not less than 10 years and not more than life and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than 20 years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$4,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$8,000,000 if the defendant is an individual or \$20,000,000 if the defendant is other than an individual, or both. Any sentence under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such



term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein.

"(2) In the case of a violation of subsection (a) of this section involving -

"(A) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

"(B) 500 grams or more of a mixture or substance containing a detectable amount of -

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

"(C) 5 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

"(D) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(E) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(F) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

"(G) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

the person committing such violation shall be sentenced to a term of imprisonment of not less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$2,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in

accordance with the provisions of title 18, United States Code, or \$4,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this paragraph shall, in the absence of such a prior conviction, include a term of supervised [sic] release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised [sic] release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein.

"(3) In the case of a violation under subsection (a) of this section involving a controlled substance in schedule I or II, the person committing such violation shall, except as provided in paragraphs (1), (2), and (4), be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States or a foreign country relating to narcotic

drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$2,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding the prior sentence, and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this paragraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence."

(b) Section 1010(b)(4) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(4)), as redesignated, is amended -

(1) by striking out, "except as provided in paragraph (4)";

(2) by striking out "fined not more than \$50,000" and inserting in lieu thereof "fined not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$250,000 if the defendant is an



individual or \$1,000,000 if the defendant is other than an individual"; and

(3) by inserting "except in the case of 100 or more marihuana plants regardless of weight," after "marihuana,".

\* \* \*

#### SEC. 1866. MINOR TECHNICAL AMENDMENTS.

(a) Section 403(a)(2) of the Controlled Substances Act (21 U.S.C. 843(a)(2)) is amended by striking out the period at the end and inserting a semicolon in lieu thereof.

(b) Section 405A(b) of the Controlled Substances Act (21 U.S.C. 845a(b)) is amended by striking out "special term" and inserting "term of supervised release" in lieu thereof.

(c) Section 405A(c) of the Controlled Substances Act (21 U.S.C. 845a(c)) is amended by striking out "section 4202" and inserting "chapter 311" in lieu thereof.

(d) Section 1008(e) of the Controlled Substances Import and Export Act (21 U.S.C. 958(e)) is amended by striking out "section" the first place it appears and inserting "sections" in lieu thereof.

(e) Section 1010(b)(3) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(3)) is amended by striking out, " except as provided in paragraph (4)".

(f) The table of contents for the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended -

(1) by inserting after the item relating to section 405 the following:

"Sec. 405A. Manufacture or distribution in or near schools.

"Sec. 405B. Employment of minors in controlled substance trafficking.";

and

(2) by inserting after the item relating to section 414 the following:

"Sec. 415. Alternative fine.".

\* \* \*

#### CRIMINAL LAW AND PROCEDURE TECHNICAL AMENDMENTS ACT OF 1986 PUBLIC LAW 99-646 100 STAT. 3592 NOV. 10, 1986

#### An Act

To amend title 18 of the United States Code and other laws to make minor or technical amendments to provisions enacted by the Comprehensive Crime Control Act of 1984, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Criminal Law and Procedure Technical Amendments Act of 1986".

\* \* \*

SEC. 14. AMENDMENTS RELATING TO SUPERVISED RELEASE.

(a) IN GENERAL. - Section 3583(e) of title 18, United States Code, is amended -

(1) by striking out "Modification of term or conditions." and inserting "Modification of conditions or revocation." in lieu thereof; and

(2) in paragraph (1), by striking out "previously ordered".

(b) EFFECTIVE DATE. - The amendments made by this section shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

\* \* \*

SEC. 17. CONCURRENCE OF RUNNING OF TERM OF SUPERVISED RELEASE.

(a) IN GENERAL. - Subsection (e) of section 3624 of title 18, United States Code, as added by section 212(a) of the Comprehensive Crime Control Act of 1984, is amended -

(1) by striking out ". The term" the second place it appears and inserting "and" in lieu thereof;

(2) by striking out ", except that it" and inserting ". A term of supervised release" in lieu thereof;

(3) by striking out ", other than during limited intervals as a condition of probation or supervised release,"; and

(4) by inserting before the period at the end of the third sentence the following: "unless the imprisonment is for a period of less than 30 consecutive days".

(b) EFFECTIVE DATE. - The amendment made by this section shall take effect on the date of the taking effect of such section 3624.

\* \* \*

SEC. 28. INSERTION OF MISSING WORD.

Section 405A(b) of the Controlled Substances Act (21 U.S.C. 845a(b)) is amended by inserting "parole" after "(2) at least three times any special".

\* \* \*

SENTENCING ACT OF 1987  
PUBLIC LAW 100-182  
101 STAT. 1266  
DEC. 7, 1987

An Act

To amend title 18, United States Code, and other provisions of law relating to sentencing for criminal offenses.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE

This Act may be cited as the "Sentencing Act of 1987".



SEC. 2. PROSPECTIVE APPLICATION OF SENTENCING REFORM ACT.

(a) APPLICATION. – Section 235(a)(1) of the Comprehensive Crime Control Act of 1984 is amended by inserting after “date of enactment” the first place it appears the following: “and shall apply only to offenses committed after the taking effect of this chapter”.

(b) CONFORMING AMENDMENTS. – (1) Section 235(b)(1) of the Comprehensive Crime Control Act of 1984 is amended by striking out “convicted of an offense or adjudicated to be a juvenile delinquent” and inserting in lieu thereof “who committed an offense or an act of juvenile delinquency”.

(2) Section 235(b)(3) of the Comprehensive Crime Control Act of 1984 is amended by striking out “that is within the range that applies to the prisoner under the applicable parole guideline” and inserting in lieu thereof “pursuant to section 4206 of title 18, United States Code”.

\* \* \*

SEC. 22. APPLICATION OF RULE 35(B) TO CONDUCT OCCURRING BEFORE EFFECTIVE DATE OF SENTENCING GUIDELINES.

The amendment to rule 35(b) of the Federal Rules of Criminal Procedure made by the order of the Supreme Court on April 29, 1985, shall apply with respect to all offenses committed before the taking effect of section 215(b) of the Comprehensive Crime Control Act of 1984.

\* \* \*

SEC. 24. AUTHORITY TO LOWER A SENTENCE BELOW A STATUTORY MINIMUM FOR OLD OFFENSES.

Notwithstanding section 235 of the Comprehensive Crime Control Act of 1984 –

(1) section 3553(e) of title 18, United States Code;

(2) rule 35(b) of the Federal Rules of Criminal Procedure as amended by section 215(b) of such Act; and

(3) rule 35(b) as in effect before the taking effect of the initial set of guidelines promulgated by the United States Sentencing Commission pursuant to chapter 58 of title 28, United States Code,

shall apply in the case of an offense committed before the taking effect of such guidelines.

SEC. 25. LIMITATION ON TERM TO BE SERVED FOR VIOLATION OF CONDITIONS OF SUPERVISED RELEASE.

Section 3583(e)(4) of title 18, United States Code, is amended by striking out “Commission.” and inserting in lieu thereof “Commission, except that a person whose term is revoked under this paragraph may not be required to serve more than 3 years in prison if the offense for which the person was convicted was a Class B felony, or more than 2 years in prison if the offense was a Class C or D felony.”.

## SEC. 26. GENERAL EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to offenses committed after the enactment of this Act.

**TITLE 21 - FOOD AND DRUGS  
CONTROLLED SUBSTANCES ACT  
PART D - OFFENSES AND PENALTIES  
21 U.S.C. § 841 (1982)**

**§ 841. Prohibited acts A****(a) Unlawful acts**

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally -

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

**(b) Penalties**

Except as otherwise provided in section 845 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a controlled substance in schedule I or II which is a narcotic drug, such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than \$25,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this

paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, a fine of not more than \$50,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment.

(B) In the case of a controlled substance in schedule I or II which is not a narcotic drug or in the case of any controlled substance in schedule III, such person shall, except as provided in paragraphs (4), (5), and (6) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine of not more than \$15,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than \$30,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of



imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 3 years, a fine of not more than \$10,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 6 years, a fine of not more than \$20,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than \$5,000, or both. If any person commits such a violation after one or more convictions of him for an offense punishable under this paragraph, or for a crime under any other provision of this subchapter or subchapter II of this chapter or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant

substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than \$10,000, or both.

(4) Notwithstanding paragraph (1)(B) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in subsections (a) and (b) of section 844 of this title.

(5) Notwithstanding paragraph (1)(B) of this subsection, any person who violates subsection (a) of this section by manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense, except as authorized by this subchapter, phenylcyclidine (as defined in section 830(c)(2) of this title) shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than \$25,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under paragraph (1) of this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 20 years, a fine of not more than \$50,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

(6) In the case of a violation of subsection (a) of this section involving a quantity of marihuana exceeding 1,000 pounds, such person shall be sentenced to a term of imprisonment of not more than 15 years, and in addition, may be fined not more than \$125,000. If any person commits such a violation after one or more prior convictions of such person for an offense punishable under paragraph (1) of this paragraph, or for a felony under any other provision of this subchapter, subchapter II of this chapter, or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, and in addition, may be fined not more than \$250,000.

**(c) Special parole term**

A special parole term imposed under this section or section 845 of this title may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. A special parole term provided for in this section or section 845 of this title shall be in addition to, and not in lieu of, any other parole provided for by law.

**(d) Piperidine offenses and penalty**

Any person who knowingly or intentionally -

(1) possesses any piperidine with intent to manufacture phencyclidine except as authorized by this subchapter, or

(2) possesses any piperidine knowing, or having reasonable cause to believe, that the piperidine will be used to manufacture phencyclidine except as authorized by this subchapter.

shall be sentenced to a term of imprisonment of not more than 5 years, a fine of not more than \$15,000, or both.

(Pub. L. 91-513, title II, § 401, Oct. 27, 1970, 84 Stat. 1260;  
Pub. L. 95-633, title II, § 201, Nov. 10, 1978, 92 Stat. 3774;  
Pub. L. 96-359, § 8(c), Sept. 26, 1980, 94 Stat. 1194.)

**TITLE 21 - FOOD AND DRUGS  
CONTROLLED SUBSTANCES IMPORT  
AND EXPORT ACT  
21 U.S.C. § 960 (1982)**

**§ 960. Prohibited acts A**

**(a) Unlawful acts**

Any person who -

(1) contrary to sections 952, 953, or 957 of this title, knowingly or intentionally imports or exports a controlled substance,

(2) contrary to section 955 of this title, knowingly or intentionally brings or possesses on board a vessel, aircraft, or vehicle a controlled substance, or

(3) contrary to section 959 of this title, manufactures or distributes a controlled substance,



shall be punished as provided in subsection (b) of this section.

**(b) Penalties**

(1) In the case of a violation under subsection (a) of this section with respect to a narcotic drug in schedule I or II, the person committing such violation shall be imprisoned not more than fifteen years, or fined not more than \$25,000, or both. If a sentence under this paragraph provides for imprisonment, the sentence shall include a special parole term of not less than three years in addition to such term of imprisonment.

(2) In the case of a violation under subsection (a) of this section with respect to a controlled substance other than a narcotic drug in schedule I or II, the person committing such violation shall be imprisoned not more than five years, or be fined not more than \$15,000, or both. If a sentence under this paragraph, provides for imprisonment, the sentence shall, in addition to such term of imprisonment, include (A) a special parole term of not less than two years if such controlled substance is in schedule I, II, III, or (B) a special parole term of not less than one year if such controlled substance is in schedule IV.

**(c) Special parole term**

A special parole term imposed under this section or section 962 of this title may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall be increased by the period

of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. The special term provided for in this section and in section 962 of this title is in addition to, and not in lieu of, any other parole provided for by law.

(Pub. L. 91-513, title III, § 1010, Oct. 27, 1970, 84 Stat. 1290.)

**TITLE 21 – FOOD AND DRUGS  
PART D – OFFENSES AND PENALTIES  
21 U.S.C. § 841 (Supp. III 1985)**

**§ 841. Prohibited acts A**

*[See main edition for text of (a)]*

**(b) Penalties**

Except as otherwise provided in section 845 or 845a of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving –

(i) 100 grams or more of a controlled substance in schedule I or II which is a mixture or substance containing a detectable amount of a narcotic drug other than a narcotic drug consisting of –

(I) coca leaves;

(II) a compound, manufacture, salt, derivative, or preparation of coca leaves; or

(III) a substance chemically identical thereto;

(ii) a kilogram or more of any other controlled substance in schedule I or II which is a narcotic drug;

(iii) 500 grams or more of phencyclidine (PCP); or

(iv) 5 grams or more of lysergic acid diethylamide (LSD);

such person shall be sentenced to a term of imprisonment of not more than 20 years, a fine of not more than \$250,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 40 years, a fine of not more than \$500,000, or both<sup>1</sup>

(B) In the case of a controlled substance in schedule I or II except as provided in subparagraphs (A) and (C),<sup>2</sup> such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than \$125,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under

<sup>1</sup> So in original. Probably should be followed by a period.

<sup>2</sup> So in original

any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, a fine of not more than \$250,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment.

(C) In the case of less than 50 kilograms of marihuana, 10 kilograms of hashish, or one kilogram of hashish oil or in the case of any controlled substance in schedule III, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine of not more than \$50,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than \$100,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of



imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 3 years, a fine of not more than \$25,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 6 years, a fine of not more than \$50,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than \$10,000, or both. If any person commits such a violation after one or more convictions of him for an offense punishable under this paragraph, or for a crime under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final,

such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than \$20,000, or both.

(4) Notwithstanding paragraph (1)(C) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in subsections (a) and (b) of section 844 of this title.

(5) Notwithstanding paragraph (1), any person who violates subsection (a) of this section by cultivating a controlled substance on Federal property shall be fined not more than –

(A) \$500,000 if such person is an individual; and

(B) \$1,000,000 if such person is not an individual.

**(c) Special parole term**

A special parole term imposed under this section or section 845 845a<sup>3</sup> of this title may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. A special parole term provided for in this section or section 845 845a<sup>4</sup> of this title shall be in addition to, and not in lieu, of, any other parole provided for by law.

<sup>3</sup> So in original. Probably should be "or 845a".

[See main edition for text of (d)]

(As amended Pub. L. 98-473, title II, §§ 502, 503(b)(1), (2), Oct. 12, 1984, 98 Stat. 2068, 2070.)

\* \* \*

**TITLE 21 - FOOD AND DRUGS**  
**21 U.S.C. § 960 (Supp. III 1985)**

**§ 960. Prohibited acts A**

[See main edition for text of (a)]

**(b) Penalties**

(1) In the case of a violation under subsection (a) of this section involving -

(A) 100 grams or more of a mixture or substance containing a detectable amount of a narcotic drug in schedule I or II other than a narcotic drug consisting of -

(i) coca leaves;

(ii) a compound, manufacture, salt, derivative, or preparation of coca leaves; or

(iii) a substance chemically identical thereto;

(B) a kilogram or more of any other narcotic drug in schedule I or II;

(C) 500 grams or more of phencyclidine (PCP);

(D) 5 grams or more of lysergic acid diethylamide (LSD);

the person committing such violation shall be imprisoned for not more than twenty years, or fined not more than \$250,000, or both.

(2) In the case of a violation under subsection (a) of this section with respect to a controlled substance in schedule I or II, the person committing such violation shall, except as provided in paragraphs (1) and (3), be imprisoned not more than fifteen years, or fined not more than \$125,000, or both. If a sentence under this paragraph provides for imprisonment, the sentence shall include a special parole term of not less than three years in addition to such term of imprisonment.

(3) In the case of a violation under subsection (a) of this section with respect to less than 50 kilograms of marihuana, less than 10 kilograms of hashish, less than one kilogram of hashish oil, or any quantity of a controlled substance in schedule III, IV, or V, the person committing such violation shall, except as provided in paragraph (4)<sup>3</sup> be imprisoned not more than five years, or be fined not more than \$50,000, or both. If a sentence under this paragraph provides for imprisonment, the sentence shall, in addition to such term of imprisonment, include (A) a special parole term of not less than two years if such controlled substance is in schedule I, II, III, or (B) a special parole term of not less than one year if such controlled substance is in schedule IV.

[See main edition for text of (c)]

(As amended Pub. L. 98-473, title II, § 504, Oct. 12, 1984, 98 Stat. 2070.)

\* \* \*

<sup>3</sup> So in original. Probably should be followed by a comma.



**TITLE 21 – FOOD AND DRUGS**  
**21 U.S.C. §§ 845, 845a (Supp. IV 1986)**

**§ 845. Distribution to persons under age twenty-one**

**(a) First offense**

Except as provided in section 845a of this title, any person at least eighteen years of age who violates section 841(a)(1) of this title by distributing a controlled substance to a person under twenty-one years of age is (except as provided in subsection (b) of this section) punishable by (1) a term of imprisonment, or a fine, or both, up to twice that authorized by section 841(b) of this title, and (2) at least twice any special parole term authorized by section 841(b) of this title, for a first offense involving the same controlled substance and schedule. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall not be less than one year.

**(b) Second or subsequent offense**

Except as provided in section 845a of this title, any person at least eighteen years of age who violates section 841(a)(1) of this title by distributing a controlled substance to a person under twenty-one years of age after a prior conviction or convictions under subsection (a) of this section (or under section 333(b) of this title as in effect prior to May 1, 1971) have become final, is punishable by (1) a term of imprisonment, or a fine, or both, up to three times that authorized by section 841(b) of this

title, and (2) at least three times any special parole term authorized by section 841(b) of this title, for a second or subsequent offense involving the same controlled substance and schedule. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.

(As amended Pub. L. 98-473, title II, §§ 224(b), 503(b)(3), Oct. 12, 1984, 98 Stat. 2030, 2070; Pub. L. 99-570, title I, §§ 1005(b)(1), 1105(a), (b), Oct. 27, 1986, 100 Stat. 3207-6, 3207-11.)

\* \* \*

**§ 845a. Distribution or manufacturing in or near schools and colleges**

**(a) Penalty**

Any person who violates section 841(a)(1) of this title or section 856 of this title by distributing or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university is (except as provided in subsection (b) of this section) punishable (1) by a term of imprisonment, or fine, or both up to twice that authorized by section 841(b) of this title; and (2) at least twice any special parole term authorized by section 841(b) of this title for a first offense. Except to

the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.

**(b) Second offenders**

Any person who violates section 841(a)(1) of this title or section 856 of this title by distributing or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university after a prior conviction or convictions under subsection (a) of this section have become final is punishable (1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) a term of imprisonment of up to three times that authorized by section 841(b) of this title for a first offense, or a fine up to three times that authorized by section 841(b) of this title for a first offense, or both, and (2) at least three times any term of supervised release authorized by section 841(b) of this title for a first offense.

**(c) Suspension of sentence; probation; parole**

In the case of any sentence imposed under subsection (b) of this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under subsection (b) of this section shall not be eligible for parole under chapter

311 of title 18 until the individual has served the minimum sentence required by such subsection.

(Pub. L. 91-513, title II, § 405A, as added Pub. L. 98-473, title II, § 503(a), Oct. 12, 1984, 98 Stat. 2069, and amended Pub. L. 99-570, title I, §§ 1104, 1105(c), 1841(b), 1866(b), (c), Oct. 27, 1986, 100 Stat. 3207-11, 3207-52, 3207-55; Pub. L. 99-646, § 28, Nov. 10, 1986, 100 Stat. 3598.)

\* \* \*

**TITLE - FOOD AND DRUGS  
PART D - OFFENSES AND PENALTIES  
21 U.S.C. § 841 (Supp. V 1987)**

**§ 841. Prohibited acts A**

*[See main edition for text of (a)]*

**(b) Penalties**

Except as otherwise provided in section 845, 845a, or 845b of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving -

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of -

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;



(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound mixture, or preparation which contains any quantity of any of the substance referred to in subclauses (I) through (III);

(iii) 50 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$4,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more

prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$8,000,000 if the defendant is an individual or \$20,000,000 if the defendant is other than an individual, or both. Any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(B) In the case of a violation of subsection (a) of this section involving -

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of -

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substance referred to in subclauses (I) through (III);

(iii) 5 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from

the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$2,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$4,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.



(C) In the case of a controlled substance in schedule I or II except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$2,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not

place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(D) In the case of less than 50 kilograms of marihuana, except in the case of 100 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil or in the case of any controlled substance in schedule III, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least

2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 3 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 6 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine not to exceed the

greater of that authorized in accordance with the provisions of title 18 or \$100,000 if the defendant is an individual or \$250,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more convictions of him for an offense punishable under this paragraph, or for a crime under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$200,000 if the defendant is an individual or \$500,000 if the defendant is other than an individual, or both.

(4) Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in section 844 of this title and section 3607 of title 18.

(5) Any person who violates subsection (a) of this section by cultivating a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed -

(A) the amount authorized in accordance with this section;

(B) the amount authorized in accordance with the provisions of title 18;

(C) \$500,000 if the defendant is an individual; or



(D) \$1,000,000 if the defendant is other than an individual;

or both.

(c) **Repealed.** Pub. L. 98-473, title II, § 224(a)(2), formerly § 224(a)(6), Oct. 12, 1984, 98 Stat. 2030, as renumbered by Pub. L. 99-570, title I, § 1065(a)(2), Oct. 27, 1986, 100 Stat. 3207-6

**(d) Piperidine offenses and penalty**

Any person who knowingly or intentionally -

*[See main edition for text of (1) and (2)]*

shall be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions to title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both.

**(e) Boobytraps on Federal property; penalties; "boobytrap" defined**

(1) Any person who assembles, maintains, places, or causes to be place a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years and shall be fined not more than \$10,000.

(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term

of imprisonment of not more than 20 years and shall be fined not more than \$20,000.

(3) For the purposes of this subsection, the term "boobytrap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.

(As amended Pub. L. 98-473, title II, §§ 224(a), 502, 503(b)(1), (2), Oct. 12, 1984, 98 Stat. 2030, 2068, 2070; Pub. L. 99-570, title I, §§ 1002, 1003(a), 1004(a), 1005(a), 1103, title XV, § 15005, Oct. 27, 1986, 100 Stat. 3207-2, 3207-5, 3207-6, 3207-11, 3207-192.)

\* \* \*

**TITLE 21 - FOOD AND DRUGS  
21 U.S.C. § 960 (Supp. V 1987)**

**§ 960. Prohibited acts A**

*[See main edition for text of (a)]*

**(b) Penalties**

(1) In the case of a violation of subsection (a) of this section involving -

(A) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(B) 5 kilograms or more of a mixture or substance containing a detectable amount of -

(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

(C) 50 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

(D) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(E) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(F) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

(G) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

the person committing such violation shall be sentenced to a term of imprisonment of not less than 10 years and not more than life and if death or serious bodily injury

results from the use of such substance shall be sentenced to a term of imprisonment of not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$4,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this subchapter or subchapter I of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment not less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$8,000,000 if the defendant is an individual or \$20,000,000 if the defendant is other than an individual, or both. Any sentence under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein.



(2) In the case of a violation of subsection (a) of this section involving -

(A) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(B) 500 grams or more of a mixture or substance containing a detectable amount of -

(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

(C) 5 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

(D) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(E) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(F) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

(G) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

the person committing such violation shall be sentenced to a term of imprisonment not less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$2,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this subchapter or subchapter I of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment not less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$4,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised<sup>2</sup> release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised<sup>2</sup> release of at

<sup>2</sup> So in original. Probably should be "supervised".

least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein.

(3) In the case of a violation under subsection (a) of this section involving a controlled substance in schedule I or II, the person committing such violation shall, except as provided in paragraphs (1), (2), and (4), be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provisions of this subchapter or subchapter I of this chapter or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$2,000,000 if

the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding the prior sentence, and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this paragraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(4) In the case of a violation under subsection (a) of this section with respect to less than 50 kilograms of marihuana, except in the case of 100 or more marihuana plants regardless of weight, less than 10 kilograms of hashish, less than one kilogram of hashish oil, or any quantity of a controlled substance in schedule III, IV, or V, the person committing such violation shall be imprisoned not more than five years, or be fined not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both. If a sentence under this paragraph provides for imprisonment, the sentence shall, in addition to such term of imprisonment, include (A) a term of supervised release of not less than two years if such controlled substance is in schedule I, II, III, or (B) a term



of supervised release of not less than one year if such controlled substance is in schedule IV.

(As amended Pub. L. 98-473, title II, § 225, formerly § 225(a), 504, Oct. 12, 1984, 98 Stat. 2030, 2070; Pub. L. 99-570, title I, §§ 1004(a), 1005(c), 1302, 1866(e), Oct. 27, 1986, 100 Stat. 3207-6, 3207-15, 3207-55.)

---